

1

Acc.No.

0 2 9 5 5 3

N S Bindra's

Interpretation of Statutes

Twelfth Edition

Amita Dhanda

Professor of Law
NALSAR University of Law

0 2 9 5 5 3

Acc.No.



LexisNexis

and Consolidating Statutes;
Penal Statutes have to be

legislation. Such important
statutes have been separately

subject matter of interpretation.

included, in the final part of
the Central Legislature and

and necessary in this book
from the legal profession. I
commentators on this subject

N S Bindra

Contents

<i>Preface to the Twelfth Edition</i>	<i>v</i>
<i>Preface to the Eleventh Edition</i>	<i>xi</i>
<i>Preface to the Tenth Edition</i>	<i>xv</i>
<i>Preface to the Ninth Edition</i>	<i>xxi</i>
<i>Preface to the First Edition</i>	<i>xxiii</i>
<i>Table of Cases</i>	<i>xliii</i>

PART I

THE INSTITUTIONAL REGIME OF INTERPRETATION

CHAPTER 1

Law Making Roles of the Legislature and the Judiciary

Lawmaking is the Domain of the Legislature	7
Cases Illustrating Various Interpretative Techniques	13
Limits on the Judiciary While Performing the Interpretative Role	23
Modification of the Language of the Statute	23
Policy of a Statute and Limits on Interpretation	25
Interpretation as Complementary Law Making	26
Reconstructing and Constructing the Law	33
Conclusion	39

CHAPTER 2

Relation between the Executive and the Legislature

Introduction	94
What is Delegated Legislation?	94
Limits on Delegated Legislation and Excess Delegation	95
Scope of Court's Scrutiny in Delegated Legislation	100
Constitutional Validity	104
Forms of Subordinate Legislation	105
1. Colonial Legislation	106

2. Executive	106
3. Judicial	106
4. Municipal	106
5. Autonomous	106
Validity of Rules, Regulations, Bye-laws and other Communications	107
Rules	108
Other Communications	113
Statutory Rules Forming Part of the Original Schedule	113
Statutory Rules that are not Part of a Statute	114
Clash between Statutory and Executive Powers	115
Scope of Statutory Rules	115
Validity of Enactment cannot be saved by Statutory Rules	116
Rules as an Aid to Construction of Ambiguous Statutes	116
Regulations	117
Executive Instructions	117
Notifications	120
Bye-laws	121
Difference Between Statutory Rules and Bye-Laws	121
Construction of Bye-Laws	122
Limitations Imposed by Bye-Laws	124
Reasonableness of Bye-Laws	125
Bye-laws Adding to the Law	125
Repugnancy between the Parent and Delegated Legislation	126
Severability in Delegated Legislation	129
Doctrine of Implied Powers	130
Implied Obligations	134
Implied Obligation Arising out of Judicial Power	135
Conclusion	135

CHAPTER 3

The Relationship between the Judiciary and the Executive

Introduction	157
Nature of Executive Power	158
Policy Making by the Executive	159
Justiciability of Powers Conferred on the Executive under the Constitution	162
Pardoning Powers	163
Imposition of Article 356	167
Judicial Appointments	171
Supplementing the Executive	174
Conclusion	176

PART II

TECHNIQUES, TOOLS AND RULES OF INTERPRETATION

CHAPTER 4

Presumptions

Statutes are Presumed to be Valid	182
Amongst Alternatives, Constitutional Meaning to be Preferred	182
Burden to Prove that the Presumption is Rebutted	184
Presumption Holds Good for all Legislatures	185
Presumption for various Laws	186
All kinds of Legal Documents	186
Statute in Infringement of Fundamental Rights	186
Rules when the Language is Ambiguous	187
Limits on the Applicability of the Principle	188
Intention of Legislature does not Confer Validity	189
Spirit of the Constitution is not an Adequate Basis for Challenge	189
Severability of Provisions	190
Problem of Separable Application	191
Difference between Civil and Criminal Statutes	192
Statutes are Territorial in Operation	196
Indian Legislatures	196
Parliament	197
State Legislatures in India	197
Statutes are Presumed to be in Conformity with International Law	198
Legislature Presumed not to Enact Contrary to International Law	199
Municipal Courts Bound by Enacted Law	201
Legislature does not commit a Mistake	205
Correction of Mistakes when Permissible	207
Misstatement of Law	208
Burden of Proving Mistake of Legislature	208
Legislature does not Waste its Words	208
Construction Consistent with Smooth Working of System	211
Words Interpreted in Ordinary Sense Unless Technical	212
Plain and Natural Meaning not Interchangeable with Popular Meaning	212
Ordinary Meaning Subject to Context and Other Factors	213
Technical Words Retain their Technical Meaning	215
Legislature Presumed to Know the Law, Judicial Decisions and General Principles of Law	217

Misapprehensions as to State of Law	218
Wrong Recital	219
No Alternation in Law is Presumed	220
Presumption in Case of Re-Enactment	222
Prior Judicial Interpretation	222
Reproduction of Language of Old Act in New Act	222
Statutes in Pari Materia	223
Presumption in Case of Changes in Phraseology	223
Vested Rights are Preserved	225
Vested Rights	225
The presumption	226
No Retrospective Operation to Disturb Vested Rights	227
Substantive Rights Distinguished from Matters of Procedure	228
Jurisdiction of Court Presumed to not be Excluded	229
Meaning of Jurisdiction	229
Consent cannot give Jurisdiction	231
Statutory Jurisdiction to be Exercised Subject to Specified Limitations	231
Consensual Jurisdiction	232
Jurisdiction of Superior Courts	232
No Implied Authority to Deprive Superior Courts of their Jurisdiction	232
Jurisdiction of Civil Courts	232
Presumption Against the Ouster of Jurisdiction	233
Court's Jurisdiction to Determine Jurisdictional Facts	234
New Right and Special Remedy	234
Special Tribunal	234
Provision Making Performance Enforceable in a Specified Manner	235
Prescribing Statutory Duty without Laying down Remedy	236
Where Special Tribunal does not come into Existence or Neglects to Function	236
Avoidance of Conflict of Jurisdiction	237
Presumption against Retrospectivity	238
Exception	240
Conclusion	241
 CHAPTER 5	
Statute and its Parts	
Introduction	245
Text of the Statute and its Significance	246
Parts of Statutes	247
Title of the Statute	247
Long Title	248

	218	Short Title	249
	219	Title of a Chapter	250
	220	Preamble	250
	222	Preamble Resorted to in two Classes of Cases	254
	222	Presumption in Case of a Consolidating Act	258
	222	Rules Regarding Use of Preamble Summed Up	258
	223	Interpretation Clause	259
	223	Use of Artificial Expressions or Terms of Art	261
	225	Definition Binding on Court	261
	225	Definitions Apply to all Sections without Exception	262
	226	Use of Word 'Denotes'	263
	227	Use of Words 'Includes', 'Shall Include' or 'Shall Mean and Include'	263
ure	228	'Includes' or 'Means'	266
	229	Deeming Provision	267
	229	Legal Fiction	271
	231	Double Fiction	273
Limitations	231	Meaning Conclusive	273
	232	Caution	274
	232	Interpretation of Definition	274
Jurisdiction	232	It should not Disturb Plain Meaning of Words	275
	232	It should not be Repugnant to Context	275
	233	Definition in Other Acts	277
	234	Headings	278
	234	Heading and Title	279
	234	Heading 'Miscellaneous'	279
Manner	235	As Key to the Construction Thereof	279
	236	Cannot Restrict the Meaning of Sections	279
or Neglects to	236	Useful Aid in Cases of Doubt	280
	237	Marginal Notes	280
	238	Hints on Drafting	281
	240	When not Assented to by Legislature	282
	241	When Assented to by the Legislature	283
		Amendment of Section without Amendment of Marginal Note	284
		Marginal Notes in Different Statutes	284
		Side-notes or Side-headings	284
		Conflict over Utility Continues	285
	245	Punctuations and Brackets	285
	246	Regarding Old Enactments in India	285
	247	Illustrations	289
	247	For Use of Untrained Judiciary	289
	248		

Higher Value than that of Marginal Note	290
Higher Value than that of Headings	291
Conflict between Section and Illustration Thereto	291
Proviso, Exception, Saving Clause	292
Proviso	293
Application	297
Object of Proviso	297
Proviso Embraces Field Covered by Main Section	298
Proviso Subsidiary to Main Section	298
Proper Function	299
Proviso Repugnant to Enacting Part	300
Repeal of Enactments	301
Exception	301
Assumption Regarding Necessity of Exceptions	302
Exception to be Ignored if Repugnant to Enactment	303
Particular Intention Incompatible with General Intention Serves as	303
Exception	303
Interpretation of Exception	305
Saving Clause	305
Strict or Liberal Construction	305
Object of Saving Clause	306
Saving Clause in Temporary Statute	307
Explanation	310
Explanation may not Relate to Same Subject	310
Schedule	312
Forms	313
Erratum	313
Conclusion	313
 CHAPTER 6	
Rules of Interpretation	
Introduction	315
Literal Rule of Interpretation and Golden Rule of Interpretation	317
Literal Rule of Interpretation	317
Illustrations of the Literal Rule	318
Golden Rule of Interpretation	325
Illustrations for the Golden Rule	327
Mischief Rule of Interpretation	334
Heydon's Case and Beyond	334

Illustrations of the Application of the Mischief Rule	336
Strict and Liberal Construction	339
Liberal Interpretation	339
Strict Interpretation	340
When does the Question of 'Strict' and 'Liberal' Construction Arise?	341
Liberal Interpretation with Reference to Former Law	342
Strict or Liberal Interpretation with Reference to Person and Rights Affected	343
With Reference to the Letter or Language of the Statute	343
With Reference to the Purposes and Objects of the Statutes	344
Non-Interpretive Considerations	345
Reasonableness	345
Two Possible Interpretations	346
Presumption of Fairness and Hardship	347
Presumption of Fairness	347
Course taken by the Courts if Hardship is Pleaded	349
Conclusion	351

CHAPTER 7

Internal Aids

Introduction	353
Context	355
Section to be Read as a Whole	358
Phrase to be taken as a Whole	359
Statement of Objects and Reasons	360
Words in Statutes <i>in Pari Materia</i>	366
Words Previously Judicially Interpreted	369
Construction of an Earlier Act by a Subsequent Act	369
Technical Meaning	372
Surplusage	374
Draftsman's Errors	376
<i>Noscitur a sociis</i>	378
Rule Distinguished from <i>Ejusdem Generis</i> Rule	380
<i>Reddendo Singula Singulis</i>	381
<i>Ejusdem Generis</i>	382
Meaning	382
General Words which Follow Controlled by Specific Words which Precede	385

Specific Words which Precede General Words not Controlled by the Latter which follows the Former	388
Reasons	389
When the Doctrine does not Apply	389
<i>Expressio Unius Est Exclusio Alterius</i>	394
<i>Casus Omissus</i>	397
Court cannot Supply <i>Casus Omissus</i>	399
Effect of <i>Casus Omissus</i>	400
Conclusion	401

CHAPTER 8

Mandatory and Directory Provisions

Introduction	433
What are Mandatory and Directory Provisions?	436
Legislative Intent	437
Purpose behind Enactment	438
Historical Retrospect	439
Affirmative and Negative Words	441
Mandatory and Permissive Words	443
'May'	444
'Shall'	446
Test	450
Essence of the Matter or Mere Matter of Form	451
Basic Test: Consequences of Failure to Follow Statute	452
No Fixed Rule Giving Exact Answer	452
Three Fundamental Tests	454
Statutes Pertaining to Official Action	455
Distinction between Grant of Powers and Rights, and Imposition of Duties	455
Two Provisions, One Importing Objection to do an Act and the Other not	457
No Limitation on Powers Unless Justified by Express Words or Necessary Implication	457
Direction to do Duty within Specified Time	459
Where Compliance Discretionary	461
Action in Respect of Statutory Duty	461
Statutes Relating to Judicial Duties and Proceedings	462
Statutes Regulating Elections and Tax Proceedings	464
Conclusion	466

CHAPTER 9

Retrospective Operation of Statutes

Introduction	500
Different Senses of Referring to <i>Ex Post Facto</i> Laws	501
Rule of Questionable Policy	503
Rule not Applicable to Penalties Imposed	505
Competence to Enact Retrospective Laws	506
Applicability of the Rule to Substantive Rights	508
Jurisdiction	510
Rights Accrued before Operation of Statute	510
Operation of Rule by Express Words or by Necessary Implication	511
Necessary Implication	512
No Greater Retrospectivity than Necessary	514
Canons of Construction	516
Where two Interpretations Possible	517
Effect must be given to Language Irrespective of Consequences	518
How Far Prior State of Law Relevant	518
Alteration of Law During Pendency of Action	518
Application of Rules in Different Areas of Law	521
No Vested Right in Procedure	521
Curative and Validating Acts	522
Right of Appeal a Substantive Right	524
Confirmative Statute	525
Statute of Limitation	526
Rules of Evidence	527
Court Fee	527
Statute Imposing New Penalties and Liabilities	528
Tax Legislation	528
Remedial Statutes	530
Repealing Acts	530
Retrospective Operation of Rules	531
Conclusion	532

CHAPTER 10

Maxims used to Aid Interpretation

Introduction	534
<i>Abundans Cautela Non Nocet</i>	534
<i>Actus Curiae Neminem Gravabit</i>	534
<i>Actor Sequitur Forum Rei</i>	535

<i>Actus Non Facit Reum Nisi Mens Sit Rea</i>	536
Exception to the Rule	539
Exception Usually Limited to Minor Offences	541
<i>Argumentum a Simili Valet in Lege</i>	541
<i>Argumentum Ab Auctoritate Est Fortissimum In lege</i>	542
(a) Subordinate Courts	542
(b) Expression of its Own Opinion by Subordinate Court	543
(c) Revenue Courts	544
(d) High Court Benches	545
<i>Contemporanea Expositio Est Optima Et Fortissima In Lege</i>	546
<i>Delegatus Non Potest Delegare</i>	548
State can challenge Delegated Legislation as <i>Ultra Vires</i>	550
<i>Expressum Facit Cessare Tacitum</i>	550
<i>Generalia Specialibus Non Derogant</i>	551
Illustrations of the Maxim	552
(e) Limits to Rule	554
<i>Inclusio Unius Exclusio Alterius</i>	555
<i>Lex Nihil Frustra Facit</i>	556
<i>Lex Non Cogit Ad Impossibilia</i>	556
<i>Maxime Ita Dicta Quia Maxima Ejus Dignitas Et Certissima Auctoritas, Atque Quod Maxim Omnibus Probetur</i>	556
<i>Nemo Allegans Turpitudinem Suam Audiendus Est</i>	556
<i>Non Obligat Lex Nisi Promulgata</i>	556
<i>Nova Constitutio Futuris Formam Imponere Debet Non Praeteritis</i>	557
Conclusion	558

CHAPTER 11

External Aids to Interpretation

Introduction	588
Types of External Aids	588
Reports of Commissions and Committees	589
White Paper	591
Proceedings in Parliaments	593
Debates	593
Reference in Case of Ambiguity	596
Notes on Clauses	597
Bills	598
Surrounding Circumstances	599
Policy	601

536	Executive Construction	603
539	Legislation Repeating the very Words on which Practice Founded	603
541	Practice Notes	604
541	Departmental Manual	604
542	Value Persuasive	604
542	Creation of Vested Rights	605
543	Entering into Contracts with Government	605
544	Usage	605
545	<i>Optima Legum Interpres Consuetudo</i>	605
546	Limits to the Rule	606
548	International Law	607
550	Dictionaries	607
550	Textbooks and Encyclopedias	610
551	Analogy	611
552	History of Legislation	611
554	When History not a Proper Guide	612
555	Reference to History when Justified—Limit thereof	613
556	When Meaning of Statute is Clear	613
556	When Statute has been Amended	614
	Conclusion	615
556	CHAPTER 12	
556	Repeal and Savings	
557	Introduction	617
558	Objects of 'Repealing Acts'	618
	Express Repeal	619
	Implied Repeal	620
	Onus in Case of Repeal by Implication	625
588	Test of Implied Repeal	628
588	Effect of Repeal on Transactions Completed	630
589	Effect of Repeal on Vested Rights and Procedure	631
591	Repeal of Repealing Enactment	632
593	Effect of Repeal	634
593	Repeal How Affects Inchoate and Vested Rights	637
596	Effect of Repeal of the Parent Act on Bye-Laws	638
597	Partial Repeal	639
598	Repealing Act Substituting Some Provision in Lieu of the One Repealed	640
599	Repealing Clause Attached to an Unconstitutional Statute	640
601	Legislation by Incorporation and Reference	640

Repealed Sections Whether to be Considered to Gather meaning of Unrepealed Section	643
Temporary Statutes	644
Effect on Proviso	644
Repeal with a Saving Clause	644
Repeal of State Act by Central Act	645
Conclusion	645

PART III

THE CONTEXTUAL DIMENSION OF INTERPRETATION

CHAPTER 13

Interpretation of the Constitution

Introduction	652
Applicability of Rules of Statutory Construction	655
Original Intent and Dynamic Interpretation	655
The Constituent Assembly Debates as an Aid to Constitutional Interpretation	659
Preamble as a Source of Interpretation	662
Interpretation of Part III	662
Progressive Interpretation of Part III	666
Harmonious Construction	669
Analogous Provisions in other Constitutions and Foreign Precedents	671
Interpretation of Legislative Powers	673
Doctrine of Pith and Substance	676
No Conflict between Entries in the Same List	678
Conflict between Entries in Different Lists to be Avoided	678
Same Rules Irrespective of Form of Government	679
Act and its Subject Matter to be considered	680
Power to Legislate in Respect of all Ancillary and Subsidiary Matters Covered by an Entry	681
Ambit of Different Entries Dependent Upon Facts of Each Case	683
Validity of Act not Dependent Upon the Label it Bears	683
Consequences how Far Affecting Validity	684
Interpretation of Fiscal Powers under the Constitution	685
Doctrine of Implied Powers	687
Ancillary Powers to be Truly Incident to Main Powers	688
Court may Complement But not Supplement a Granted Power	689
Doctrine of Implied Prohibition	689

643	Doctrine of Repugnancy	690
644	Doctrine of Colourable Legislation	693
644	Supposed Spirit of Constitution not to Restrict Powers	694
644	Writ Jurisdiction under Article 226	696
645	Repeal of Older Constitution by New Constitution	696
645	Operation of Amendments	697
645	Doctrine of Eclipse	697
	Effect of Unconstitutionality of an Act	700
	Conclusion	702

CHAPTER 14

General and Special Statutes

	Introduction	719
	Special Provisions Followed by General Act	721
	General Act Followed by Special Act	722
652	Presumption	724
655	Penal Provisions	725
655	Provisions Relating to Property	727
659	Ordinarily no Repeal by Implication	728
662	Repeal by Necessary Implication	729
662	Conflict between Special and General Statutes	729
666	Special and General Provisions in Same Statute	732
669	Conflict to be Reconciled	733
671	Strict Construction	735
673	Conclusion	735

CHAPTER 15

Substantive and Procedural Laws, Amending, Codifying, Consolidating and Enabling Statutes

	Introduction	750
681	Substantive and Procedural Laws	750
683	Rules of Construction	752
683	Limitation Act	755
684	Procedural Law and Retrospective Effect	756
685	Amending Statutes	756
687	Reasons for Amending Statutes	759
688	Effect of Amendment on Parent Statute	759
689	Construction of Amending Statutes	760

Cautious Interpretation	762
Alteration in Law	763
Amendment not to Incorporate Something Inconsistent with or Repugnant to Object of Act	766
Amendment in Procedural and Substantive Provisions	766
When an Amendment Takes Effect	767
Effect of Amendment on Judicial Decisions	769
Effect of Invalidity of Amendment on Original Act	769
Codifying Statutes	769
Consolidating Statutes	774
Construction of Consolidating Statutes	775
Distinction between Codification and Consolidating Statutes	775
Amending and Consolidating Statutes	776
Enabling Statutes	777
Inference from Negative Words	780
Inference from Affirmative Words	781
Power Conferred within Specified Purposes	784
Anticipatory Provisions	785
Conclusion	786

CHAPTER 16

Beneficial and Welfare Statutes

Introduction	797
Beneficial Statutes and Rule of Beneficent Construction	797
Remedial Statutes and their Interpretation	798
Interpretation ought to Prevent a Failure of Intention	800
Illustrations of Welfare Legislation	801
Illustrations from Socio-economic and Labour Legislations	809
Conclusion	816

CHAPTER 17

Interpretation of Expropriating, Emergency, and Penal Statutes

Introduction	817
Expropriating Statutes	818
Emergency Legislation and Public Order	819
Illustrations	821
Repeal on Termination of Emergency	823
War-time Legislation	824

Contents

762
763
or
766
766
767
769
769
769
774
775
775
776
777
780
781
784
785
786

es

817
818
819
821
823
824

Contents

xxxix

Penal Statutes	824
Strict Construction	824
No Extension by Implication	828
Benefit to the Subject in case of Doubt and Standards of Compliance	831
Where Two Interpretations Possible	832
Evolution of Common Standards of Interpretation and the Discarding of Strict Interpretation	834
The Rule of Strict Construction today	836
Law as it Exists on the Date of the Judgment	839
Surrounding Circumstances	839
Meaning of Words cannot be Cut Down	839
Omission How Dealt With	840
Implied Repeal	840
No Retrospective Effect	841
Object of the Act and Strict Interpretation	841
Interpretation of Special Penal Statutes	845
Conclusion	846

CHAPTER 18

Interpretation of Fiscal Statutes

Introduction	859
Taxation only by Express Words	860
Rule to Determine Tax Liability	862
Literal Construction	865
Taxing Statute to be Construed Strictly to Give Power to Impose Tax	868
Earlier Decisions and Governing Principles	868
No Extension by Implication	869
No Extension by Analogy	869
No Straining of Language	870
No Equitable Construction	871
Consideration of Reason and Justice Not Material	872
No Extension by Fiction	872
Strict Construction	873
Fair Interpretation	876
Exemptions from Taxation	877
Invalidity of Exemption does not Invalidate Statute	882
Ambiguous Words	883
Intention of the Legislature how Far Effectuated	883
Substance and not Form to be Taken into Consideration	885
Tax Planning and Tax Evasion	886

Retrospective Effect	887
Constitutional Validity	887
Taxing Legislation Subject to Fundamental Rights and other Constitutional Provisions	887
Conclusion	888

PART IV

PRECEDENTS AND INTERPRETATION

CHAPTER 19

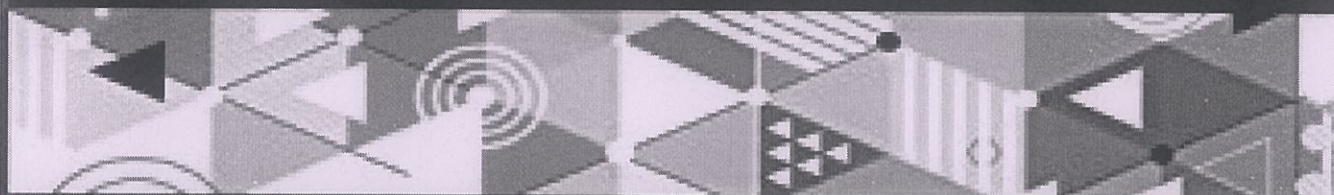
Precedents and Interpretation

Introduction	912
Juristic Opinion on Precedents	913
Finding out the Ratio	916
<i>Obiter dicta</i>	917
Precedents <i>Sub-silentio</i>	919
Reliance on Precedents in Pre-Independence India	919
Binding value of reported and unreported precedents	923
Binding Value of Privy Council Decisions in Post Independence India	923
Reliance on English and Foreign Precedents	925
Doctrine of Precedent after the Constitution	929
Whether Supreme Court bound by its own decisions	929
Reliance on Doctrine of <i>Stare Decisis</i>	932
Prospective Overruling	935
Decision on Question of Facts not Binding	936
Operation of Precedents in Procedural Law	941
Binding Force of Supreme Court <i>Obiter</i>	941
Binding Force of Concession	944
Precedents to Guide Interpretation	945
Legislative Power to Override Precedent	947
Decisions from Different Benches and Bench Strength	947
Precedential Value of decisions expressing Divergent Views	948
Decision of High Court on Local Statute	956
Court of Co-ordinate Jurisdiction	956
Decisions of Other High Courts	956
Decisions of Reconstituted High Courts	956
Quasi-judicial Bodies how far Bound by their Own Precedents	957
Decisions <i>per incuriam</i>	958

Overruling of Precedents	960
Large Benches and the Uncertainty of Precedent	966
<i>Kesavananda</i> and beyond	966
<i>TMA Pai</i> and Beyond	967
Case Studies on Operation of the Theory of Precedent in Specific Areas of law	969
Case Study: Article 301 – From <i>Atiabari</i> to <i>Jindal Steel</i>	969
Right to Life and Liberty : The Chequered Jurisprudence of Article 21	972
Interpreting the Text of Article 21	972
Fundamental Rights: Self-contained Codes?	975
<i>Maneka Gandhi v Union of India</i>	976
Conclusion	978
 APPENDIX	
The General Clauses Act, 1897	981
 <i>Subject Index</i>	999

7th edition

MP JAIN & SN JAIN



Principles of Administrative Law

Amita Dhanda



LexisNexis

M P Jain & S N Jain'S Principles Of Administrative Law by M P Jain and S N Jain Revised by Amita Dhanda , Lexis Nexis

Books from same Author: M P Jain and S N Jain Revised by Amita Dhanda

Books from same Publisher: Lexis Nexis

Related Category: Author List / Publisher List

General Information	
Author(s)	M P Jain and S N Jain Revised by Amita Dhanda
Publisher	Lexis Nexis
Edition	7th Edition 2017
ISBN	9788131251621
Pages	1196
Binding	Paperback
Language	English
Publish Year	July 2017

DESCRIPTION

Lexis Nexis M P Jain & S N Jain'S Principles Of Administrative Law by M P Jain and S N Jain Revised by Amita Dhanda

Judge made law is constantly evolving and to obtain a grip on what has been laid down by the courts is a difficult task. The arduousness of the task is enhanced when the principles laid down by the Courts have relevance for every field of law. Experts in any area of law cannot understand the rightful exercise of power in that field be it educational, administration or services regulation without knowing the relevant principles of administrative law controlling it. M P Jain and S N Jain's Principles of Administrative Law was conceived as that authoritative text book which would assist both novice and scholar to understand the principles of Administrative Law both generically and how they apply to a particular field of law.

This seventh edition of the established authority has been revised by Professor Amita Dhanda to show the reader how the Courts have refined the enunciation and application of the Principles of Administrative Law as the face of the Indian State changed from the days of the license raj to the times of public disinvestment. It points out how the tasks of seeking accountability have altered when performed by restraintivist or activist courts. Public Interest Litigation allowed the less privileged to reach the doors of the court and the right to information allowed people to access the data without which judicial review could not provide the much needed relief.

Ignorance of the law is no excuse. However, knowledge of the law is not easy to find in a limitless field like Administrative Law. M P Jain and S N Jain's Principles of Administrative Law is an authoritative exposition on the subject which appropriately addresses the needs of practitioner, teacher and student. Amita Dhanda has produced this seventh edition to ensure that this revered textbook continues to serve the critical knowledge needs of its new and established readership.

OXFORD

THE INDIAN
YEARBOOK OF
COMPARATIVE
LAW 2016

EDITED BY
Mahendra Pal Singh



The Indian Yearbook of Comparative Law 2016

Table of contents

List of Tables and Figures
Preface Introduction by Upendra Baxi
List of Abbreviations

PART I COMPARATIVE LAW: GENERAL THEMES

1. Of Apples and Mangoes: Comparing the European Union and India Philipp Dann, Maxim Bönnemann, and Tanja Herklotz
2. Legal Cultures in Comparative Perspective Markus Kotzur
- 3 Democracy, Privatization, and the Rise of Non-state Regulatory Power George Katrougalos
- 4 Ambedkar's Liberty Concept in Comparative Constitutional Thought Moiz Tundawala and Salmoli Choudhuri

PART II PRIVATE LAW

- 5 The Stakeholder Approach towards Directors' Duties under Indian Company Law: A Comparative Analysis
Mihir Naniwadekar and Umakanth Varottil
- 6 Corporate Governance of Family-run Companies: Comparison of India and Hong Kong
Swati Deva

PART III PUBLIC LAW

SECTION A CONSTITUTIONAL LAW

- 7 Constitutionalism: African Perspectives Yash Ghai
- 8 Establishing Judicial Review in China: Impediments and Prospects Qianfan Zhang
- 9 Constitutionalizing Public Participation in Kenya Jill Cottrell
- 10 Inclusive Constitutionalism and the Indigenous People of the Chittagong Hill Tracts in Bangladesh Ridwanul Hoque
- 11 A Comparative Study of Constitutional Policies Relating to Ethnic Pluralism in SAARC Countries
P. Ishwara Bhat and Aratrika Choudhuri

SECTION B HUMAN RIGHTS

- 12 Comparing Fundamental Social Rights in the European and the Indian Union
Jörg Luther
- 13 Direct Complaints of Individuals against Legal Acts Adopted by the European Union
Wolfram Cremer
- 14 Sizing up the Opposition: Taking the Comparative Route to Entrench the CRPD Paradigm
Amita Dhanda
- 15 Disability Rights at a Crossroads: Reflections on Evolution of Public Law of Physical and Mental Disability
Sanjay Jain
- 16 Three Models of Affirmative Action through the Lens of Separation of Powers: South Africa, Canada, and India
Arpita Sarkar

SECTION C ENVIRONMENTAL LAW

17 The Chances of a National Sustainability Strategy for a Balanced and Stable Development:
The Example of India Michael von Hauff

18 Public Participation in Environmental Governance in India and Indonesia Nupur Chowdhury
and Arie Afriansyah

19 Environmental Courts and Tribunals: A Comparative Analysis of Australia's LEC and India's
NGT Usha Tandon

Index

About the Editor and Contributors

Private International Law: South Asian States' Practice

January 2017

DOI: 10.1007/978-981-10-3458-9

ISBN: 978-981-10-3457-2

Authors:



Sai Ramani Garimella

Citations (2)

Abstract

This book shows how, with the increasing interaction between jurisdictions spearheaded by globalization, it is gradually becoming impossible to confine transactions to a single jurisdiction. Presented in the form of a compendium of essays by eminent academics and practitioners in the field, it provides a detailed overview of private, international law practice in South Asian nations, addressing contemporary discourse within this knowledge domain. Conflict of laws/private international law arises from the universal acknowledgment that it is difficult to govern human transactions solely by the local law. The research presented addresses the three major threads of private international law – jurisdiction, choice of law and enforcement – within each of the South Asian countries in the areas of family law and commercial law. The research in family law domain includes traditional areas such as marriage, divorce and maintenance, as well as some of the contemporary concerns in this region – inter-country child retrieval, surrogacy, and the country statement on accession to the Hague Conventions related to this domain. In commercial law the research explores the concerns raised with regard to choice of law issues in transnational contracts, and also enforcement of foreign judgment/arbitral awards in the nations of this region.

Chapters (21)

South Asian Legal Systems and Families in Foreign Courts: The British Case

Chapter

- Jan 2017
- Private International Law South Asian States' Practice
- pp.3-18



Prakash Shah

This chapter discusses some salient features of the private international law framework applicable in Britain and compares it with that of the European civil law countries where different assumptions apply.

It then provides a brief overview of the South Asian comparative backdrop against which some questions which come up in British and other European legal systems can be set, including the basic feature of personal laws which is the norm in South Asia but exceptional for Europe. It discusses the how South Asians in Europe have formed communities that result from immigration over several decades, including how that has conditioned the types of private international law questions raised and how recent developments associated with Muslims question previously favoured models of multiculturalism. Lastly, there is a focus on how the development of unofficial sharia fora in the UK, within a larger comparative context, is complicating and potentially undermining the existing model of private international law.

Choice of Law in International Commercial Arbitration

Chapter

Markus Petsche

The choice-of-law rules applied by arbitral tribunals differ in several respects from the approaches followed by domestic courts. Those differences arise in connection with three distinct choice-of-law problems: (i) the determination of the law applicable absent a choice of law by the parties, (ii) the interpretation and supplementation of the law chosen by the parties, and (iii) the application of mandatory norms. As far as item (i) is concerned, arbitration-specific choice-of-law rules typically grant arbitrators more freedom than ordinary conflict-of-laws norms. In relation to international sale of goods transactions, for example, Article 4(1)(b) of the Rome I Regulation on the law applicable to contractual obligations provides for the application of the law of the country where the seller has his habitual residence (unless the contract is more closely connected with another country), while Article 28(2) of the UNCITRAL Model Law on International Commercial Arbitration allows arbitrators to determine the applicable law on the basis of the conflict rule of their choosing. Under the arbitration laws of several countries, arbitrators are even entitled to apply non-national law such as general principles of law, the UNIDROIT Principles of International Commercial Contracts, or principles common to the parties' legal systems. With regard to item (ii), arbitral tribunals may similarly resort to non-national legal sources when interpreting, or filling the gaps of, the applicable domestic law. This was expressly contemplated by the drafters of the aforementioned UNIDROIT Principles according to whom the Principles "may be used to interpret or supplement domestic law" (see Preamble). As to item (iii), the conflict rules of codifications such as the Rome I Regulation lay down specific rules regarding the application of the mandatory norms of both the forum and other relevant jurisdictions. The former cannot be transposed to international arbitration due to the absence of a "forum" of international arbitral tribunals. The latter, while not directly applicable, may be taken into account by arbitral tribunals. However, it is more likely that arbitral tribunals will view the question of the application of specific mandatory norms from the angle of possible enforcement problems that may result from the non-application of those norms.

Chapter

Poomintr Sooksripaisarnkit

The Hague Convention on the Choice of Court Agreements ('Convention') drafted under the auspice of the Hague Conference on Private International Law was concluded on 30 June 2005. It was ratified by Mexico on 26 September 2007. With the ratification by the European Union on 11 June 2015, the Convention has come into force on 1 October 2016. Therefore, the question is whether other countries

should follow the European Union's footsteps in ratifying and giving effect to this Convention. This chapter will consider the said question.

Conflict of Laws—State Practice in Afghanistan

Chapter

Wali Mohammed Naseh

Afghanistan as a civil law based country has a codified set of Private International Law rules related to concerns arising from personal status, property, marital disputes and the law related to commercial disputes. This chapter showcases and analyses the legal system, the provisions of the Afghan Civil Code, Afghan Commercial Code and other related laws that address the conflict of laws scenario in disputes related to matrimonial relief, movable and immovable property and the applicable law on commercial disputes. The chapter attempts to discuss the unique features of the private international law in Afghanistan.

View

Cross-Border Divorce Regime in Bangladesh

Chapter

Sanwar Hossain

About 40 Million Bangladeshi citizens live in foreign countries; many of whom were married in Bangladesh under Bangladeshi laws and when they decide to divorce they face a dilemma in choosing the legal regime for their divorce procedure. This chapter focuses on divorce procedures for Bangladeshi citizens married under the laws of Bangladesh who are now living abroad. The current domicile or citizenship of these people are varied as they have either become foreign national or have attained dual citizen or still holding Bangladeshi citizenship. The chapter describes the available divorce procedure for them and the procedure to resolve related matters in Muslim marriage, child custody, child support, distribution of marital property etc. The primary legislation of divorce registration in Bangladesh; The Muslim Family Laws Ordinance 1961 is to a large extent silent regarding cross border divorce procedures. However the simple procedure for Muslim Divorce in Bangladesh attracts the concerned population to choose Bangladeshi regime. The acceptability of divorce under Bangladeshi laws in the countries like USA, UK, Australia, Canada and EU countries have also been discussed as well as Bangladesh's association with Hague Conference on Private International Law in family matters convention. The author of the chapter from his experience in representing the non-resident Bangladeshi clients shares the practical legal obstacles and ambiguities.

Cross-Border Divorce Decrees—Recognition in India and Public Policy Considerations

Chapter



Vasanthi Nimushakavi

The framework of Private International Law is based on the premise of choice of law in matters that are considered private or personal. Private persons may determine the law that applies to them and may seek remedies in forums that are available for the law chosen. The right to agency, consent and contract which are fundamental to private law are also libertarian values intrinsic to public law. The critique of private law from a feminist perspective has focused on the need to mainstream gender concerns into public and private law. Gender mainstreaming has led to an increased concern for gender issues as part of public policy. One of the controversies in the private law domain has been with regard to adding the ground of irretrievable breakdown of marriage in Indian Law. Thus while an irretrievable breakdown of marriage is a valid ground for divorce in many jurisdictions it is not a ground under Indian law although there have been judgments which have suggested that this might be added as a ground by the legislature. The Indian Judiciary has been reluctant to recognise a foreign court's judgment and has held women who do not want to submit to the jurisdiction of foreign courts may invoke that domestic jurisdiction. In this context Indian law is clearly not in tune with many other jurisdictions. This paper will examine the position of Indian courts with regard to the matrimonial relief of divorce by examining public policy considerations that Indian courts have used.

Foreign Judgments in Matrimonial Disputes—Recognition in Nepal and Public Policy Considerations

Chapter

Srijana Regmi

Private international law is a relatively less developed domain in Nepal. There is no specific legislation governing private international law. Over the past few years, however, the judiciary of Nepal has witnessed a number of cases regarding recognition of foreign judgments, exclusively concerning matrimonial issues. In this backdrop, this chapter discusses the situation of recognition of foreign judgments vis-à-vis matrimonial cases in Nepal. Beginning with an overview on the historical development of private international law in Nepal, the chapter proceeds on to discuss existing legislations governing issues involving foreign elements and judicial decisions on the recognition of foreign marriages and divorces in Nepal. The chapter then makes a descriptive narration of the draft law on private international law and an analysis of the provisions related to matrimonial matters in the draft. An attempt to provide recommendation on improvising the draft law vis-à-vis matrimonial issues has also been made.

Cross-Border Divorce—Sri Lankan State Practice

Chapter

Kaushani Pathirana

The increased number of Non Resident Sri Lankans and international marriages have given rise to a host of cross-border legal problems. The current chapter discusses one of the contentious areas of Sri Lankan family law dealing with cross-border divorce. The chapter elaborates the Sri Lankan legal system to understand the different personal law applicable to questions of marriage. The paper will focus on the statutory and the judicial approach developed towards the recognition of cross border divorce under Sri Lankan legal system. The chapter will also look at the three important strands of Private International Law in the form of Jurisdiction, choice of law and enforcement of foreign judgment. The chapter will also focus on Sri Lanka's association with Hague Conference on Private International Law in the sphere of matrimonial matters.

Cross-Border Surrogacy: Indian State Practice

Chapter

Stellina Jolly

Cross-Border surrogacy helps couples, with difficulties of child conception, avail of a medical alternative. The National Commission for Women, India has highlighted the increasing availability of medical services for surrogacy and India's emergence as a surrogacy market, almost to an unofficial value of US\$1 billion. Contemporary legal position on surrogacy, across the world, is diverse. Such diversity presents much challenge to private international law dealing with issues of determination of legal parentage and nationality for the child born. The Hague Conference on Private International Law has been, since 2011, working towards developing legal resources involved in exploring a solution to the issue. This chapter attempts to present the legal structure in India, minimal though it is, affecting cross-border surrogacy arrangements. It also contextualizes the discussion on the cases where children born to foreign citizens through surrogacy were left to face legal battle to determine nationality and parentage.

Inter-country Child Abduction—Indian Legal Response

Chapter

Molshree A. Sharma

As the world shrinks and people travel all over the world to work and live so do they establish families and roots where they go. International marriages are becoming increasingly common as immigration and vast diasporas' becomes a reality of the world. As a result, the development of a body of private international family law has been crucial to resolving the inevitable issues that arise. A significant issue is that of child custody where parents may not only be of different nationalities but also may simply live or be present in different countries for what become crucial periods of time. Before, the issue of custody and best interest of the child can even be addressed the first matter of inquiry is which country can rightfully adjudicate the custody matter. To avoid, competing jurisdictions and purposeful wrongful removal of children by a parent attempting to divest the other parent of any custody rights, the Hague Convention on the Civil Aspects of International Child Abduction serves as the comprehensive body of law that first establishes which country has the right to adjudicate custody which is crucial as stated above, to avoid, multiple jurisdictional fights, and entanglement of politics on what become emotional issues of nationhood, cultural standards for children and issues surrounding parental kidnapping. There has been a strong push by practitioners for India to sign the Convention. To be a part of the global

community, the case is made, that India must be seen as a place where standard international Conventions especially as they relate to child custody will be honoured. In fact the Indian Law Commission in 2009 completed its report authored in part by Justice Lakshmanan, concluded that India must accede to the Convention and sign it rather than become a haven for parental kidnapping. This is however controversial for a number of reasons where realities of spousal abuse, fraudulent marriages and lack of ability to litigate are cited. Further, so far, the judiciary in India has been extremely quick to adjudicate custody disputes even when the child has not resided in India for any substantial period or arguably has been “wrongfully removed” per standards of the Convention. The chapter will explore the case law generated specifically in the Indian case law and also changes in it, while at the same time explore what reasons Court’s have applied to resolve these issues.

Inter-country Child Abduction—Pakistan’s Legal Response

Chapter

Sarmad Ali

The number of international child abduction in the territory of Pakistan has increased in the wake of a growing trend of cross-cultural marriages. However legal aspects of International child abduction has not received much attention and awareness from the government of Pakistan and relevant authorities. The international community through Hague Convention mechanism lays down procedure to bring back the abducted child to his/her place of habitual residence and attempt to prevent parental child abduction. Hague convention is a multilateral treaty, which addresses parental abduction by facilitating co-operation between central authorities of the signatory countries to expedite the return of the child to the country of their habitual residence. Pakistan is not a party to Hague Convention but cross border families disputes particularly child abduction has been treated with immense importance by the judiciary of Pakistan on the basis of the welfare of child as a guiding principle of family law in custody matters.

Inter-country Child Abduction—Sri Lankan Legal Response

Chapter

Rose Wijeyesekera

Despite being a signatory to some key Hague Conventions on private international law related aspects, Sri Lanka is skeptical as far as the private international law is concerned. A first glance at the situation gives the definite imprint of legal uncertainty, caused by diverse reasons ranging from religious to political. Judicial determinations oscillate between tradition and novelty based on positivism and modernism affecting various aspects of human life. Amidst this background, the chapter attempts to analyze the legal statement affecting the lives and rights of citizens who choose to make bonds beyond horizons, and the approaches adopted to resolving the legal issues arising from and related to such bonds, specifically in respect of inter-country child abduction. In the context of the broad objectives of the Civil Aspects of International Child Abduction Act of 2001, which Sri Lanka enacted in honoring its international obligations and to give effect to the Hague Convention on the Civil Aspects of International Child Abduction of 1980, the chapter analyses the Sri Lankan pre-legislation and post-legislation legal position in respect of parental obligations, duties and responsibilities of the Central Authority, and procedural aspects including jurisdiction. A selection of Sri Lankan judgments are analyzed to examine judicial conceptualization of inter-country child abductions in the context of its international obligations

and local law, and the relevance and applicability of foreign judgments in local courts. The impact of the 2001 legislation is assessed on its own provisions as well as compared to the Reciprocal Enforcement of Judgments Ordinance of 1921 and of 1935.

Conflict of Laws—State Practice of Bangladesh

Chapter

Mohammed Abdur Razzak

During a negotiation for a transaction between individuals/businesses of two different nations, selection of proper law and forum for settlement of disputes arising out of the transaction is not an easy task to accomplish. Further, it always haunts the legal practitioners when they are asked to bring a proceeding in a local court against a foreign party. The haunting aspect is that the court of foreign jurisdiction, where the judgment may be enforced against the foreign defendant, may refuse to recognize the judgment. The legal principles are not so solidified in this area of law. This study of conflict of laws tends to explain the unsettled aspect of it in the context of the State of Bangladesh. Bangladesh (formerly East Pakistan, prior to its independence) has been experiencing the dilemma of conflict of laws. A number of statutes address the issue of choice of forum, proper law and enforcement of foreign judgment. Disputes have generated several legal decisions focusing on these issues. Still the jurisprudence is not settled with regard to the interpretation of foreign jurisdiction and proper law clauses in a contract. A formidable challenge is thrown by the rules on civil procedure of Bangladesh. The law requires that a foreign judgment, to be enforced in Bangladesh, ought to be issued by a legal system the subject law of which is not in conflict with the laws of Bangladesh. This single criterion may allow the courts of Bangladesh not to recognize the judgments of many foreign courts regarding matrimonial, adoption, corporate, property disputes etc. This study attempts to revisit the present jurisprudence of Bangladesh in respect of foreign jurisdiction and proper law clauses in a contract and the enforcement of foreign judgment in Bangladesh, especially in the light of this clause in the Civil Procedure law of Bangladesh.

- 1 Recommendation

Issues of Jurisdiction, Choice of Law and Enforcement in International Commercial Arbitration: A Bangladesh Perspective

Full-text available

Chapter

Md. Maimul Ahsan Khan

In the era of globalization in the field of international trade and commerce, international commercial arbitration has emerged as the prominent dispute settlement mechanism. It has successfully helped business traverse dispute resolution through avoiding the complexities in traditional cross-border commercial dispute litigation system. Parties have greater autonomy and control over dispute resolution process in terms of choice of law, lex arbitri and seat of arbitration among others. The New York Convention on enforcement of foreign arbitral awards has contributed significantly to international arbitration by ensuring that signatory countries would recognize and enforce arbitral awards given in the Convention countries. The UNCITRAL Model Law further offered guidance for States to help harmonize their laws related to international arbitration. Bangladesh's arbitration law premised upon the NYC and the UNCITRAL ML embodies inter-alia the provisions of choice of law, party autonomy, the

scope of applicability of lex arbitri, lex mercatoria and enforceability of foreign arbitral award in Bangladesh. Another notable development is the courts' role has been capped to a minimal level. This chapter discusses the features of Bangladesh arbitration law related to international arbitration and suggests a few areas that require a statutory revisit.

Enforcement of Foreign Arbitral Awards in Bangladesh: The Law, Its Implementation and Challenges

Chapter

Sameer Sattar

In this age, no one lives in an island. All are connected across the globe. This world is greatly premised on the free flow of trade, investment, knowledge, information and technology. Arbitration has been an important tool to expedite the process of international trade and investment by providing a speedy and, in some cases, a cost friendly method for dispute settlement. Arbitration has been successful in battling cross border jurisdictional and legal issues. However, the law and practice in some countries have shown that arbitration is again tied to the general mechanism of civil justice. This procedural intricacy makes arbitration a victim of delay, one of the evils of civil justice today. Recently, the World Bank has declared Bangladesh as a middle income country recognizing its sustained growth and resilient economy. In the context of current wave of economic transformation, international commercial arbitration has become a more relevant issue for Bangladesh. To progress and meet the demands of the international community, the Arbitration Act 2001 (the AA 2001) had been enacted in 2001 in line with the UNCITRAL Model Law on the International Commercial Arbitration. This includes provisions relating to the recognition and enforcement of foreign arbitral awards. This chapter shall focus on the provisions of AA 2001 in respect of the enforcement of foreign arbitral awards in Bangladesh, the requirements to be addressed for enforcement and the challenges the parties may face in enforcement of foreign arbitral awards in Bangladesh. The Author analyzes the provisions of AA 2001 regarding enforcement of foreign arbitral awards and identifies some definitional, jurisdictional, territorial and interpretational challenges that the AA 2001 may face.

Issues of Jurisdiction, Choice of Law and Enforcement in International Commercial Arbitration: An Indian Perspective

Chapter

Sai Ramani Garimella

International arbitration, characterized by increasing regulatory activity and escalating institutionalization of the mechanism across jurisdictions, presents an interesting yet complex structure. Flexibility within the process, primacy to the party autonomy principle and enforcement across jurisdictions are the factors that explain its increased utility. Nevertheless while most arbitration laws drew inspiration from the UNCITRAL Model Law, there have been marked shift from the guidance given in that document, within the national laws. This chapter aims to present the Indian law on international commercial arbitration, discussing the issues related to jurisdiction, choice of law and the enforcement of foreign arbitral awards and the role of the courts at the enforcement forum in deciding upon challenges to such enforcement.

Issues of Jurisdiction, Choice of Law and Enforcement in International Commercial Arbitration: A Nepal Perspective

Chapter

Gandhi Pandit

Avdhesh Pant

Arbitration, an accepted dispute resolution mechanism in Nepal, has been receiving increased interest in recent times, especially since the enactment of the new legislation on arbitration in 1999, attempting to harmonize the Nepalese law with the UNCITRAL Model Law as well as bring it on similarity with the other arbitration laws in the South Asian region. The Public Procurement Act and Regulations 2007 mandated ADR methods for dispute resolution in construction contracts. Interestingly, the legislation attempted to provide a structured methodology for the conduct of arbitration, and also specified timelines for the conduct and the completion of arbitration, a unique feature, especially because delayed arbitration has been a problem with many arbitral regimes within the region. This chapter attempts to showcase the Nepal Arbitration Act, 1999 and explain the jurisprudence developed in Nepal, especially related to the conduct of the arbitration and the enforcement of foreign arbitral awards.

Issues of Jurisdiction, Choice of Law and Enforcement in International Commercial Arbitration: A Pakistan Perspective

Chapter

Ijaz Ali Chishti

Pakistan enacted the Act of 2011 to implement the New York Convention, 1958. Section 2 of the Act, 2011 defines that foreign arbitral award is that award which is made in any of the New York Convention Contracting States or in such other States as may be notified by the Federal Government of Pakistan. This definition or determination of the scope of foreign arbitral award is, in fact, adaptation of principle of reciprocity provided for in the New York Convention. The New York Convention gives option to States that it can reserve application of the Convention to only those awards, which are made in the territory of another Contracting States. Pakistan availed this option and Section 2 of the Act, 2011 is not a definition of foreign arbitral award but the manifestation of that option. Admittedly, it is left with the law of the State where recognition of the award is sought to determine what constitutes an award enforceable under the New York Convention. There is no uniform approach amongst different countries on the definition of foreign arbitral award. Further, the New York Convention stipulates its application on the awards, which are non-domestic, and again there are divergent approaches on this terminology (non-domestic) as well. The chapter critically looks at the issue of enforcement of International Commercial Arbitration in Pakistan.

Issues of Jurisdiction, Choice of Law and Enforcement in International Commercial Arbitration: A Sri Lankan Perspective

Chapter

Saleem Marsoof

It is proposed to consider in this chapter in some detail, issues relating to jurisdiction, choice of law, and the enforcement in Sri Lanka of foreign arbitral awards. It is noteworthy that the Arbitration Act No. 11 of 1995, which is currently in force in Sri Lanka, applies uniformly to the conduct of purely domestic arbitration proceedings as well as to arbitration proceedings conducted in Sri Lanka involving one or more foreign parties and to the enforcement of foreign arbitral awards. Decisions of the courts in Sri

Lanka have emphasized the consensual nature of arbitration and adopted a policy of minimum judicial intervention into arbitration proceedings. The courts also have been supportive of arbitration and endeavoured to assist and safeguard the arbitral process. The chapter will examine the provisions of the Arbitration Act that attempt to deal with certain issues involving conflicts of jurisdiction and the doctrine of Kompetenz-kompetez which seeks to empower the arbitral tribunal to rule on its own jurisdiction. In particular, an effort will be made to examine in some detail, questions involving jurisdiction that arise in the context of section 5 of the Arbitration Act, in comparison with the law and practice that exist in other South Asian jurisdictions. The choice of applicable law has always been a problem that has confounded arbitral tribunals when dealing with cases that have cross-border connections and connotations, and it is noteworthy that the Sri Lankan Arbitration Act recognizes the concept of party autonomy in regard to choice of law. An attempt will be made in the chapter to show how Sri Lankan arbitral tribunals and courts have dealt with issues arising from competing norms of national law as well as foreign law. Prior to the enactment of the Arbitration Act in 1995, there were many issues pertaining to the enforcement of foreign arbitral awards. While the Arbitration Act has resolved most procedural issues regarding enforcement of foreign awards, there remain many grey areas, particularly in regard to the concepts of arbitrability and public policy, and the interpretation of the enforcement provisions of the Sri Lankan Act, which seek to give effect to the international obligations that arise from Sri Lanka's ratification of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards without any reservations. Recent decisions of the Supreme Court of Sri Lanka have dealt with some of these issues, which will be examined, in detail in this chapter. An attempt will be made in the chapter to explain how Sri Lankan arbitral tribunals and courts have dealt with issues arising from competing norms of national law as well as foreign law.

Private International Law Issues in Intellectual Property Law in India

Full-text available

Chapter

Vandana Singh

International contracts include matters related to intellectual property and require private enforcement i.e. legal measures taken by private parties. Such legal measures are based on the territoriality principle and determined by the law of the country where the suit is instituted. A vibrant private international law, which recognizes the expressive and constitutive capacity of judicial decision-making, can make contributions to the system well beyond the resolution of private disputes. In the traditional system governing issues related to intellectual property, national courts have had very little role to play in the construction of international intellectual property law. Litigation involved only national rights as explained within the municipal law on intellectual property rights; courts were reluctant even to adjudicate claims involving foreign intellectual property rights, leading to serial national litigation of multinational disputes, often on the basis of the similar right, guaranteed according to the municipal law system prevailing in that forum. However, it did cause national courts to take cognizance of matters having cross-border implications leading to the entry of private international law into the rubric of intellectual property rights. This chapter attempts to present the Indian position on the grounds that explain Indian courts' jurisdiction in cross-border intellectual property disputes; the laws that govern the ownership, validity and infringement of IPRs and the difficulties with regard to enforcement of foreign court orders.

Private International Law in South Asia—A Few Pointers for Harmonization

Chapter

Bruno Zeller

This chapter summarizes the narratives related to Private International Law within the South Asian region. The chapter attempts to critically appreciate the narratives discussed in the preceding chapters. Further the chapter attempts to chart a course of action for revisiting the existing legal regime in the personal law and commercial law spaces. The chapter presents a dual strategy for the law reform effort. It suggests accession to international conventions in this space, especially the important conventions of the Hague Conference within this space. Importantly, the chapter suggests strengthening the regional harmonization efforts, exemplifying through the efforts of similar organizations in other regions. The chapter suggests that harmonized legal platforms in trans-national private law can be achieved through concerted regional efforts and organizations like the SAARC could effectively contribute to the regional harmonization of the law affecting cross-border contracts. The chapter concludes by suggesting accession to the international conventions rather than embarking upon exclusive regional efforts alone.

Citations (2)

References (0)

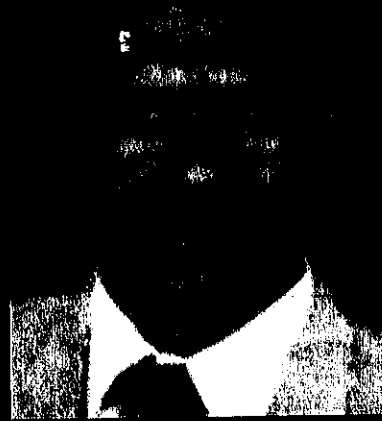
Indian Private International Law by Stellina JOLLY and Saloni KHANDERIA. Oxford, United Kingdom, New York, New York: Hart Publishing, 2021, xxxvi + 352 pp. Hardback: USD\$280.00, E-Book (PDF): USD\$252.01. doi: 10.5040/9781509938216

Article

Full-text available

- Jul 2022

**ESSAYS in HONOUR of
PROF. DR. V.R.C. KRISHNAIAH**



ASIA LAW HOUSE
HYDERABAD

CONTENTS

Foreword	v
Editors' Note	ix
Profile Prof. Dr. V.R.C. Krishnaiah	xi
Felicitation Committee Members	xiii

PART I

CONSTITUTIONAL LAW

1. Dynamics of Freedom of Expression Prof. Dr. A. Lakshminath, & Dr. K. Sitamanikyam	3
2. Struggle for Constitutional Custody in India: Recent Developments Dr.G.B.Reddy	16
3. Constitutional Mandate for Good Governance and Introspection into the Right to Public Service Act Prof (Dr) Raghunath Patnaik	36
4. Right to Information and its Impact on Good Governance in India Prof. (Dr.) A. Subrahmanyam	45
5. Realization of Gender Justice in India: Reflection of Mill's theory of Liberty Monalisa Saha	57
6. Indian Judiciary and Secularism Dr. Suresh V. Nadagoudar	64
7. Role of Media and the Press in this Age of Information - A Brief Conspectus Prof.(Dr.) Sukanta K. Nanda	74
8. Demoprudence- Indian Experience "Salus Populi Suprema Lex" Dr. K.Sita Manikyam	87
9. Equality for Gender Justice - Evolving Perspectives from UN's View Finder Dr. V. Rajyalakshmi	108
10. Legal Issues of Uniform Civil Code - A Critical Study Prof .Dr.Rayadurgam Narayana	118
11. Constitutional Contours: Who Owns' The Basket of Carrots Dr T.S.N.Sastry	135
12. Inherent Powers of Supreme Court of India Dr.R.K. Patil and Dr. Bhagyashree Paranjape	145
13. Indian Constitution and Human Rights with Special Reference to Freedom of Religion in India Dr V.M. More, Mr. Gyanendra M. Fulzalke	150

14. Who want Judicial Hegemony in Appointment of Judges?
In defense of 99th Constitutional Amendment Act
Dr. M. R. K. Prasad 156
15. Right to Life and Bhopal Gas Victims
Prof.(Dr.) S. Surya Prakash 172
16. The Role of Legal Aid Counsels in Discharging Legal Aid
Services
Dr. Devidas G Maley 182
17. "A Critical Study of Constitutional Rights and Juvenile Justice
System in India"
Venudhar Routiya 197
18. Dr. B.R. Ambedkar on Constitutional Morality: A Perspective
Dr. Alluri Satyanarayana Raju 205
19. Scope of Right to Life and Personal Liberty under the
Constitution of India with reference Judgments of the
Supreme Court of India
from 1953 to 2016
Dr. R.D. Vijayasekhar 215
20. Freedom of Speech in India
Prof.N.B.Chandra Kala 223
21. Exploring the extent of Freedom of speech and expression
Dr. Sunitha Kanipakam 231
- Emergency Legislation- Powers of President under
Indian Constitution
K.V. Kumar 237
22. Freedom of press under the Indian Constitution-A Study
Dr.J.Ramanjaneyulu 241
23. Dr. Babasaheb Ambedkar's Invaluable Contribution in the
Making of the Indian Constitution
Vivek Dhupdale 249
24. Protection of Fundamental Rights under Articles 32 & 226
in Indian Constitution
K.Himavatha Kumar, S.Lakshmi Sai Rama Krishna 260
25. Food Security In India: Constitutional Perspective
K. Srilakshmi 267
26. Directive Principles of State Policy - A Featured Study
Dr.N.Rajeswari 274

PART II CRIMINAL LAW

1. Introduction of Law Treating Juveniles: Comparative Study Dr. P. Pal Malik	285
2. Criminal Liability and Law: An Overview Dr. P. Krishna	297
3. "Retributive Justice - A Relic of Retributive Justice" Dr. D. Divakar Babu	308
4. Retributive Justice: A Medicine to Heal Dr. D. Divakar Das	315
5. Right to Access to Justice : A study in the light of Judgment of Supreme Court in <i>Anita Kushwaha v. Pushap Sudan</i> Dr. S. Md. Fazululla	328
6. Critical Evaluation of the Principles of Criminal Jurisprudence Dr. Vinod N. Patil	335
7. An Overview of Capital Punishment Dr. C. Nataraja Reddy	339
8. Reformation of the Indian Criminal Justice System Dr. Y. Shyamsundaram	343
9. Prominent Role of Res Gestae in Criminal Administration of Justice- A Concise Note S. Ayesha Azma	348
10. Offences Related to Religion Under Indian Penal Code, 1860 Mr. K. Rajendra Prasad	353
11. Role of Judiciary in Protection of the Rights of the Accused in Criminal Trail Jayasankar Medi	360
12. Plea Bargaining: The Necessary Evil in the Indian Criminal Justice System B. Sanjeeva Rao	371
13. Restorative Justice Processes in Cases of Child Sexual Abuse Nadendla Roja Rani	379
14. Contemporary trends of Section 377 of Indian Penal Code in India NVKS Sarma	386

PART III CONSUMER LAW

41. A Study on Consumer Awareness on Consumer Protection Council With Special Reference to YSR District
Dr B.Ramachandra Reddy and Mr G.Damodhar 403
42. Consumer Law
R.G.K.Murthy 409
43. Deceptive Advertisements and Unfair Charges Over MRP in the Light of New Consumer Protection Bill
Dr. G. Laxman 413
44. The Need of the Amendments to Consumer Protection Act
M. Sivaji Rao 421
45. A Study on Market Dominance in Select Indian Industries
Shaik Saleem and Dr. M. Srinivasa Reddy 427
46. Consumer Rights Under Civil Aviation Sector in India
K. Rajendra Prasad 436

PART IV ENVIRONMENTAL LAW

47. Environment and Law : Role of Indian Judiciary for Protection and Preservation of Environment
Prof. K C Ravalm 449
48. Global Warming and it's Effects on Coastal Zones and Sea Level
Prof.K.C Ravalm 475
49. Role of Judiciary in Conservation of Environment
Dr.Akula Kishan I.F.S.(Rtd) 492
50. Global Warming in International Climate Regime and Sustainable Development in Asia
Dr. G. Indira Priyadarsini 504
51. Anthropological Impact of Pollution on Marine Environment in India – A Threat to Aquatic Life
V.Sunitha 514
52. Environmental Pollution Impact on Human Rights– Constitutional Law Provisions – A Study
Dr. T. Konaiah 523
53. Protection of Society Through Environmental Challenges
Dr. S.Srinivasan 536
54. Role of Judiciary in Promoting Environment and Sustainable Development in South Asian Countries
Naresh Kumar Maharjan 542

Electronic Waste Leading to Environmental

..... 555

PART V

HUMAN RIGHTS

1. Human Rights: How they Interact?
..... 559
2. Right to Educate: A Human Rights Perspective
..... 569
3. Human Rights and Legal Services
..... 581
4. 'Rights' and Status of Women in India
..... 587
5. Protection of Women Rights in India:
..... 596
6. Labour in India - A Legal Perspective
..... 603
7. Structural Legal Safeguard for Right to Food in India
..... 610
8. Climate Change in India-A Human Right Perspective
..... 619
9. Human Rights of Elderly persons- International Perspective
..... 626
10. Factionalism and Human Rights In Andhra Pradesh
..... 633
11. Supreme Court Protector of Human Rights
..... 650
12. Natural Calamities: A Human Rights Perspective
..... 656
13. Human Rights Violation of Younger Generation in India in the
21st Century
..... 668
14. Domestic Violence in India: A Study
..... 673
15. Pharmaceutical Patents Vis-a-Vis Human Right to Health
..... 682
16. Women Empowerment and of Human Rights
..... 690

72. Human Rights Deprivation Among Unorganized Labour:
With Special Reference to Handloom Industries in Rayalaseema
Region of Andhra Pradesh
Dr. K.Sreenivasa Rao & Dharmaiah 702

PART VI

MULTIFARIOUS TOPICS

73. Stepping up to Cyber Weapons Treaty: The Way Forward
Golak Prasad Sahoo 717
74. The Dynamics of Doctrine of Precedent in Labour and
Employment Laws in India-A Critique
Dr. Durgambini Patel 728
75. Emerging Areas of Law Access to Justice – A critique on the
Arbitration and Conciliation Act 1996
Prof. [Dr.] T. Vidya Kumari 740
76. Live-in Relationships in India: Need for Legal Protection
Dr. G. Mallikarjun 754
77. Legitimate Expectation: A Supplement to Principles of Natural
Justice in the Administrative Jurisprudence
Dr. G. Rajasekar 761
- ✓ 78. The Need of Law Regulating Space Imaging in India
Dr. KVK Santhy 770
79. Emotional Infidelity: A New Frontier of Matrimonial Remedies
Dr. Aruna B Venkat 785
80. Law Relating to Importance of Section 89 of CPC in
Dispute Resolution - A Study
Dr. N. Venkateshwarlu 796
81. Role of Corporate's in Funding Social Causes with Special
Reference to Promotion of Education
Tangutur Aparna 818
82. Knowledge of Cyber Crime by Electronic Media
Dr. M. ramana Kumar & J. Rajamohan 828
83. An Overview of Computer Software Patentability &
Copyright Dilemma in India
Vaishali V. Jadhav 837
84. Live-in-Relationships in India : Judicial Perspective and
Protection
Dr. B. Anjan Singh 848
85. The Ideal Life of the Physically Challenged in Chittoor District of
Andhra Pradesh State - A Study
Dr. M. Deenadayal 853

Halsbury's
LAWS OF INDIA

Second Edition.

31

DIRECT TAX-I



 LexisNexis®

Editorial Advisory Board

Justice M N Venkatachaliah
Padma Vibhushan,
Former Chief Justice of India,
Former Chairman, National Human Rights Commission

Justice K T Thomas
Padma Bhushan,
Former Judge, Supreme Court of India

Justice C K Thakker
Former Judge, Supreme Court of India

Professor N R Madhava Menon
International Bar Association Chair Professor in Continuing
Legal Education, National Law School, Bangalore,
Former Director, National Judicial Academy, Bhopal, and
National Law School University of India, Bangalore
Former Vice-Chancellor, National University of
Juridical Sciences, Calcutta

Professor Dr M P Singh
Former Chairperson, Delhi Judicial Academy,
Former Vice Chancellor, National University
of Juridical Sciences, Calcutta

Shri Fali S Nariman
Padma Vibhushan,
Senior Advocate, Supreme Court of India

Shri Soli Sorabjee
Padma Vibhushan,
Former Attorney General for India,
Senior Advocate, Supreme Court of India

Shri Samaraditya Pal
Senior Advocate, Calcutta High Court, Barrister (Inner Temple)

Dr Rajeev Dhavan
Senior Advocate, Supreme Court of India,
Member, Executive Committee, International Commission of Jurists

Shri Arvind P Datar
Senior Advocate, Madras High Court

Ms Flavia Agnes
Advocate, Bombay High Court,
Founder-Director, Majlis - A Centre for Rights Discourse
and Inter-disciplinary Arts Initiative

The title DIRECT TAX I in Volume 31
has been contributed by:

NEHA PATHAKJI

Assistant Professor,
NALSAR University of Law, Hyderabad

TABLE OF CONTENTS

Title Scheme.....	<i>ix</i>
References and Abbreviations.....	<i>xvii</i>
Abbreviations for Law Reports	<i>xix</i>
Table of Statutes.....	<i>xxv</i>
Table of Subsidiary Legislation.....	<i>clx</i>
Table of Cases	<i>cxix</i>
Direct Tax I.....	<i>clxxvii</i>
Index	<i>687</i>

The law stated in this volume is in general that came in force on 15 May 2008, although subsequent changes have been incorporated wherever possible as per current amendments.

7

Acc.No. D03738

Justice D P Wadhwa

&

N L Rajah

THE LAW OF CONSUMER PROTECTION

Third Edition

Sudhanshu Kumar

Assistant Professor, NALSAR University of Law

Volume 1



LexisNexis®

Acc.No. D03738

THE CONSUMER PROTECTION ACT, 1986

(68 of 1986)

PART I

GENERAL CONTENTS

<i>Preface to the third edition</i>	v
<i>Message from the General Editor Justice D.P. Wadhwa</i>	vii
<i>Preface to the second edition</i>	xi
<i>Preface to the first edition</i>	xiii
<i>Table of Cases</i>	ccxciii

VOLUME 1

PART I

<i>The Consumer Protection Act, 1986</i>	1
CONSUMER PROTECTION ACT, 1986	1
CHAPTERS	PAGE
<i>Introduction</i>	3
<i>Statement of Objects and Reasons</i>	47
CHAP. I <i>Preliminary [Sections 1 to 3]</i>	51
CHAP. II <i>Consumer Protection Councils [Sections 4 to 8B]</i>	1543
CHAP. III <i>Consumer Disputes Redressal Agencies [Sections 9 to 27A]</i>	1563
CHAP. IV <i>Miscellaneous [Sections 28 to 31]</i>	1895

VOLUME 2

PART II

<i>The Consumer Protection Act, 1986</i>	1
CONSUMER PROTECTION ACT	1
PRACTICE & PROCEDURE	1
<i>Practice & Procedure</i>	1919
PART III	1
CONSUMER PROTECTION ACT	1
CONSUMER LAW ABROAD	1
<i>Consumer Law Abroad</i>	1989

* Pages 1 to 1542 relate to Vol. 1, Pages 1543 to 2980 relate to Vol. 2.

APPENDICES

PART I

CENTRAL ACT AND AMENDMENT ACTS

APP. 1	The Consumer Protection Act, 1986 (As amended by the Consumer Protection (Amendment) Act, 2002)	2085
APP. 2	The Consumer Protection (Amendment) Act, 1991	2120
APP. 3	The Consumer Protection (Amendment) Act, 1993	2122
APP. 4	The Consumer Protection (Amendment) Act, 2002	2133

PART II

CENTRAL AND STATE RULES

APP. 5	The Consumer Protection Rules, 1987	2152
APP. 6	The Consumer Welfare Fund Rules, 1992	2167
APP. 7	National Consumer Disputes Redressal Commission	2175
APP. 8	The Supreme Court Rules Relevant to the Consumer Protection Act	2184
APP. 9	The Consumer Protection Regulations, 2005	2186
APP. 10	Bureau of Indian Standards (Recognition of Consumers' Associations) Rules, 1991	2194
APP. 11	The Investor Education and Protection Fund (Awareness and Protection of Investors) Rules, 2001	2198

STATE RULES

APP. 12	The Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016	2209
APP. 13	The Jammu and Kashmir Consumer Protection Act, 1987	2235
APP. 14	The Andaman and Nicobar Islands Consumer Protection Rules, 1987	2250
APP. 15	The Andhra Pradesh State Consumer Protection Rules, 1987	2257
APP. 16	The Arunachal Pradesh Consumer Protection Rules, 1987	2266
APP. 17	Assam State Consumer Protection Rules, 1989	2276
APP. 18	The Bihar Consumer Protection Rules, 1987	2283
APP. 19	Chandigarh Consumer Protection Rules, 1987	2290

* Pages 1 to 1542 relate to Vol. 1, Pages 1543 to 2980 relate to Vol. 2.

APP. 20	The Dadra and Nagar Haveli Consumer Protection Rules, 1987	2297
APP. 21	The Delhi Consumer Protection Rules, 1987	2304
APP. 22	The Goa Consumer Protection Rules, 1987	2314
APP. 23	The Gujarat Consumer Protection Rules, 1988	2322
APP. 24	The Haryana Consumer Protection Rules, 2004	2330
APP. 25	Himachal Pradesh Consumer Protection Rules, 1988	2345
APP. 26	The Karnataka Consumer Protection Rules, 1988	2354
APP. 27	The Kerala Consumer Protection Rules, 1998	2365
APP. 28	The Lakshadweep Consumer Protection Rules, 1989	2380
APP. 29	The Madhya Pradesh Consumer Protection Rules, 1987	2387
APP. 30	Maharashtra Consumer Protection Rules, 2000	2394
APP. 31	The Meghalaya Consumer Protection Rules, 1989	2408
APP. 32	The Mizoram Consumer Protection Rules, 2000	2415
APP. 33	The Nagaland Consumer Protection Rules, 1987	2425
APP. 34	The Orissa Consumer Protection Rules, 1987	2432
APP. 35	Pondicherry Consumer Protection Rules, 1987	2441
APP. 36	Consumer Protection (Punjab) Rules, 1987	2448
APP. 37	The Rajasthan Consumer Protection Rules, 1987	2457
APP. 38	The Sikkim Consumer Protection Rules, 1990	2465
APP. 39	The Tamil Nadu Consumer Protection Rules, 1988	2476
APP. 40	The Tripura Consumer Protection Rules, 1987	2485
APP. 41	The Uttar Pradesh Consumer Protection Rules, 1987	2492
APP. 42	The West Bengal Consumer Protection Rules, 1987	2503

PART III

OTHER ALLIED ACTS, RULES & REGULATIONS

APP. 43	Union Territories to Exercise Powers of State Government Under the Consumer Protection Act, 1986	2515
APP. 44	The Competition Act, 2002	2516
APP. 45	Relevant Extracts of the Electricity Act, 2003	2576
APP. 46	The Consumer Protection Act, 1987 (U.K.)	2606
APP. 47	United Nations Guidelines for Consumer Protection, 2016	2639
APP. 48	Code of Ethics for Food Trade and Industry	2656
APP. 49	Code of Standards in Relation to the Advertising of Medicines and Treatments	2658

* Pages 1 to 1542 relate to Vol. 1, Pages 1543 to 2980 relate to Vol. 2.

APP. 49	Code for Commercial Advertising on Doordarshan	2662
APP. 50	Standards of Practices for Advertising Agencies	2669
PART V		
MISCELLANEOUS		
APP. 52	List of Appropriate Laboratories	2672
APP. 53	Model Drafts and Petitions	2684
APP. 54	List of Insurance Ombudsmen	2700
APP. 55	Major Consumer Organisations	2705
APP. 56	The Insurance Act, 1938 [As Amended by Insurance (Amendment) Act, 2002]	2707
APP. 57	Brief Note on Gold Hallmarking	2887
APP. 58	Insurance Regulatory and Development Authority Act, 1999	2888
APP. 59	List of National and State Consumer Disputes Redressal Commissions	2922
APP. 60	Addresses of District Consumer Forums	2938
Index		2981

8

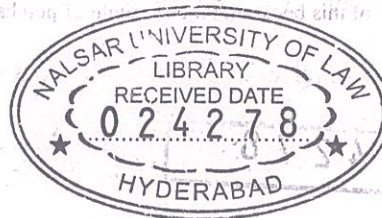
Acc. No. 024278

C R DATTA ON COMPANY LAW

*Treatise on the Companies Act, 2013 with Legislative History,
Committee Reports, Notes on the Companies Act, 1956
& SEBI Regulations*

7TH EDITION

VOLUME 1
Sections 1 - 127



LexisNexis®

Neeraj is a recipient of a scholarship for the Summer Academy of the World Trade Institute at Bern, Switzerland, for the years 2012-13. His prior publications include articles in reputed journals like *NALSAR's Journal of Corporate Affairs* and *Corporate Crimes* and NUJS' *International Journal of Legal Studies and Research*.

Ramaswami Kalidas

Senior Vice President, Reliance Power Limited

Ramaswami Kalidas is the Senior Vice President and Company Secretary of Reliance Power Limited with over 38 years of experience in the profession. He was a visiting faculty in XLRI, Jamshedpur, and has authored several articles on contemporary issues in corporate law, which has been published in leading journals. He is also one of the specialist editors of *MC Bhandari Guide to Company Law Procedures* (2015, LexisNexis).

Ramaswami Kalidas was supported by:

- **Priyadarshini Mahapatra**, a Senior Manager (Company Secretarial) at Reliance Power Limited, is a Fellow Member of the Institute of India and an Associate of the Institute of Chartered Secretaries and Administrators, UK, with over 14 years' experience in the profession.

R Sampath Kumar

Corporate Governance and Compliance Practice Head, Trilegal

R Sampath Kumar heads the Corporate Governance and Compliance Practice at Trilegal, one of the top law firms in India. He specialises in company law and other corporate compliances. In a career spanning over 17 years, he has gained expertise through both in-house roles and legal practice. His role includes advising on high-value shareholder disputes, strategic inputs in cross-border investments and joint ventures, mergers and amalgamations, and compliance advisory under labour, corporate, foreign exchange and other legislations, for Indian and multinational corporate across industries.

R Sampath Kumar was supported by his team comprising:

- Ipsita Chowdhury - Senior Associate
- Bhupinder Girdhar - Senior Consultant

Siddharth Raja

Senior Partner and National Executive Director, Argus Partners

Siddharth Raja is a gold medalist and a graduate with honours in law from India's prestigious National Law School of India University (NLSIU) and holds an LL.M.

from the University of Warwick Law School (where he was both J N Tata and a British Chevening Foreign & Commonwealth Office scholar). With close to 20 years of experience working across the world in various corporate law firms, Siddharth was a founder partner of the pan-India law firm, Samvā Partners. He specialises in private equity and venture capital transactions as well as cross-border and domestic M&A, corporate finance and general commercial law. At the time of publication, Siddharth is the Senior Partner and National Executive Director of one of India's leading law firms, Argus Partners.

Siddharth has previously been a visiting faculty member at the Department Management Studies of the Indian Institute of Science, Bangalore (where he taught a course on Business Law in 2006 and 2007), and currently delivers guest lectures to management students at the Indian Institute of Management Bangalore. Siddharth teaches a course on corporate law and M&A at both his *alma mater* NLSIU as well as at the O P Jindal Global Law School.

Siddharth Raja was supported by his team comprising:

- Apoorva Chandrika - Associate
- Surabhi Rao - Associate
- Somsubhra Banerjee - Associate
- Bhadra Menon - Associate
- Monica Umesh - Associate

Souvik Sanyal

Managing Consultant, Thought Arbitrage Research Institute (TARI)

Souvik Sanyal is a qualified lawyer, currently working with Thought Arbitrage Research Institute (TARI), a not-for-profit organisation specialising in research in areas of corporate governance, public policy and economics. He has over seven years' experience working with law firms and publication houses specialising in corporate governance and competition law. He has also contributed to the publication, *Handbook for Independent Directors* (2016, LexisNexis).

Sudhanshu Kumar

Assistant Professor (Law) - National Academy of Legal Studies and Research (NALSA) University of Law, Hyderabad

Sudhanshu Kumar is Assistant Professor at the National Academy of Legal Studies and Research (NALSA), where he lectures on corporate laws. His area of interest includes competition law, insurance laws and industrial law. Sudhanshu is a specialist in corporate law and governance. He has revised and edited *S M Dugar Guide to Competition Law* (2016, LexisNexis) containing commentary on Competition Act, 2002, MRTP Act, 1969 and Consumer Protection Act, 1986.

Contents

Specialist Editors	ix
Reviewers	xi
Preface to the Sixth Edition	xiii
Preface to the Fifth Edition	xviii
Preface to the Fourth Edition	xix
About C R Datta	xx

Quick Reference Tables

➤ The Companies Act, 2013 with Corresponding Provisions of the Companies Act, 1956	xxix
➤ The Companies Act, 1956 with Corresponding Provisions of the Companies Act, 2013	lvii
➤ Relevant Rules and Regulations Issued under The Companies Act, 1956	xc

List of Abbreviations

	xciii
--	-------

Stop Press

	xcv
--	-----

Consolidated Table of Cases (see Separate booklet)

Consolidated Subject Index (see Separate booklet)

Section	Page
----------------	-------------

Chapter I

Preliminary

Section 1	Short title, extent, commencement and application	1
Section 2	Definitions	17

Chapter II

Incorporation of Company and Matters Incidental Thereto

Section 3	Formation of company	1401
Section 4	Memorandum	1411
Section 5	Articles	1465
Section 6	Act to override memorandum, articles, etc.	1478
Section 7	Incorporation of company	1486
Section 8	Formation of companies with charitable objects, etc.	1537
Section 9	Effect of registration	1566
Section 10	Effect of memorandum and articles	1605
Section 11	Commencement of business, etc. [Omitted]	1612
Section 12	Registered office of company	1612
Section 13	Alteration of memorandum	1633
Section 14	Alteration of Articles	1687
Section 15	Alteration of memorandum or articles to be noted in every copy	1699
Section 16	Rectification of name of company	1701

Section		Page
Section 17	Copies of memorandum, articles, etc., to be given to members	1.708
Section 18	Conversion of companies already registered	1.711
Section 19	Subsidiary company not to hold shares in its holding company	1.717
Section 20	Service of documents	1.722
Section 21	Authentication of documents, proceedings and contracts	1.743
Section 22	Execution of bills of exchange, etc.	1.746

Chapter III

Prospectus and Allotment of Securities

Part I—Public offer

Section 23	Public Offer and Private Placement	1.757
Section 24	Power of Securities and Exchange Board to regulate issue and transfer of securities, etc.	1.759
Section 25	Documents containing offer of securities for sale to be deemed prospectus	1.773
Section 26	Matters to be stated in prospectus	1.778
Section 27	Variation in terms of contract or objects in prospectus	1.793
Section 28	Offer of Sale By Certain Members of Company	1.797
Section 29	Public offer of securities to be in dematerialised form	1.799
Section 30	Advertisement of prospectus	1.803
Section 31	Shelf Prospectus	1.806
Section 32	Red herring prospectus	1.812
Section 33	Issue of application forms for securities	1.817
Section 34	Criminal liability for mis-statements in prospectus	1.822
Section 35	Civil liability for mis-statements in prospectus	1.827
Section 36	Punishment for fraudulently inducing persons to invest money	1.838
Section 37	Action by affected persons	1.844
Section 38	Punishment for personation for acquisition, etc., of securities	1.845
Section 39	Allotment of securities by company	1.849
Section 40	Securities to be dealt with in stock exchanges	1.868
Section 41	Global depository receipt	1.884

Part II—Private placement

Section 42	Offer or invitation for subscription of securities on private placement	1.888
------------	---	-------

Chapter IV

Share Capital and Debentures

Section 43	Kinds of share capital	1.901
Section 44	Nature of shares or debentures	1.910

Section		Page
	Numbering of shares	1.916
Section 45	Certificate of shares	1.918
Section 46	Voting rights	1.929
Section 47	Variation of shareholders' rights	1.937
Section 48	Calls on shares of same class to be made on uniform basis	1.947
Section 49	Company to accept unpaid share capital, although not called up	1.949
Section 50	Payment of dividend in proportion to amount paid-up	1.951
Section 51	Application of premiums received on issue of shares	1.952
Section 52	Prohibition on issue of shares at discount	1.961
Section 53	Issue of sweat equity shares	1.966
Section 54	Issue and redemption of preference shares	1.973
Section 55	Transfer and transmission of securities	1.988
Section 56	Punishment for personation of shareholder	1.1059
Section 57	Refusal of registration and appeal against refusal	1.1061
Section 58	Rectification of register of members	1.1111
Section 59	Publication of authorised, subscribed and paid-up capital	1.1173
Section 60	Power of limited company to alter its share capital	1.1176
Section 61	Further issue of share capital	1.1182
Section 62	Issue of bonus shares	1.1225
Section 63	Notice to be given to Registrar for alteration of share capital	1.1236
Section 64	Unlimited company to provide for reserve share capital on conversion into limited company	1.1241
Section 65	Reduction of share capital	1.1243
Section 66	Restrictions on purchase by company or giving of loans by it for purchase of its shares	1.1286
Section 67	Power of company to purchase its own securities	1.1297
Section 68	Transfer of certain sums to capital redemption reserve account	1.1316
Section 69	Prohibition for buy-back in certain circumstances	1.1319
Section 70	Debentures	1.1322
Section 71	Power to nominate	1.1373
Section 72		
Chapter V		
Acceptance of Deposits by Companies		
Section 73	Prohibition on acceptance of deposits from public	1.1381
Section 74	Repayment of deposits, etc. accepted before the commencement of this Act	1.1400
Section 75	Damages for fraud	1.1404
Section 76	Acceptance of deposits from public by certain companies	1.1407
Section 76A	Punishment for contravention of section 73 or section 76	1.1442

Section

Chapter VI**Registration of Charges**

		1.1575
Section 77	Duty to register charges, etc.	1.1616
Section 78	Application for registration of charge	1.1620
Section 79	Section 77 to apply in certain matters	1.1625
Section 80	Date of notice of charge	1.1626
Section 81	Register of charges to be kept by Registrar	1.1628
Section 82	Company to report satisfaction of charge	
Section 83	Power of Registrar to make entries of satisfaction and release in absence of intimation from company	1.1635
		1.1637
Section 84	Intimation of appointment of receiver or manager	1.1644
Section 85	Company's register of charges	1.1649
Section 86	Punishment for contravention	1.1651
Section 87	Rectification by Central Government in register of charges	

Chapter VII**Management and Administration**

		1.1663
Section 88	Register of members, etc.	1.1684
Section 89	Declaration in respect of beneficial interest in any share	
Section 90	Investigation of beneficial ownership of shares in certain cases	1.1699
Section 91	Power to close register of members or debenture-holders or other security holders	1.1701
		1.1704
Section 92	Annual return	
Section 93	Return to be filed with Registrar in case promoters' stake changes	1.1737
		1.1738
Section 94	Place of keeping and inspection of registers, returns, etc.	1.1751
Section 95	Registers, etc., to be evidence	1.1754
Section 96	Annual general meeting	1.1784
Section 97	Power of Tribunal to call annual general meeting	1.1793
Section 98	Power of Tribunal to call meetings of members, etc.	
Section 99	Punishment for default in complying with provisions of sections 96 to 98	1.1803
		1.1809
Section 100	Calling of extraordinary general meeting	1.1831
Section 101	Notice of meeting	1.1850
Section 102	Statement to be annexed to notice	1.1862
Section 103	Quorum for meetings	1.1872
Section 104	Chairman of meetings	1.1878
Section 105	Proxies	1.1895
Section 106	Restriction on voting rights	1.1904
Section 107	Voting by show of hands	1.1908
Section 108	Voting through electronic means	1.1909
Section 109	Demand for poll	1.1922
Section 110	Postal ballot	

Section		Page
Section 111	Circulation of members' resolution	1.1928
Section 112	Representation of President and Governors in meetings	1.1937
Section 113	Representation of corporations at meeting of companies and of creditors	1.1939
Section 114	Ordinary and special resolutions	1.1943
Section 115	Resolutions requiring special notice	1.1957
Section 116	Resolutions passed at adjourned meeting	1.1963
Section 117	Resolutions and agreements to be filed	1.1965
Section 118	Minutes of proceedings of general meeting, meeting of Board of Directors and other meeting and resolutions passed by postal ballot	1.1973
Section 119	Inspection of minute-books of general meeting	1.1999
Section 120	Maintenance and inspection of documents in electronic form	1.2005
Section 121	Report on annual general meeting	1.2007
Section 122	Applicability of this Chapter to One Person Company	1.2008

Chapter VIII

Declaration and Payment of Dividend

Section 123	Declaration of dividend	1.2009
Section 124	Unpaid Dividend Account	1.2056
Section 125	Investor Education and Protection Fund	1.2073
Section 126	Right to dividend, rights shares and bonus shares to be held in abeyance pending registration of transfer of shares	1.2089
Section 127	Punishment for failure to distribute dividends	1.2095

Note:

Section 128 – Section 229, see Volume 2

Section 230 – Section 470 & Schedules, see Volume 3

Stress is a fact of life which each one has to experience. This book is an insight into the types of stress, effect of stress, the various physical, physiological, psychological, emotional, intellectual, social and the various measures which take place in the body. It also highlights the various methods to cope with stress in different work levels. The book is a must for everyone and management of stress has been dealt extensively. It would be an ideal book for students, institutions, managers and work place environments.

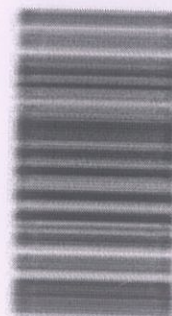
Stress Stressors Stress Management



Dr. Savitri Mathur, PhD is an Asst. Prof at the Centre for Management Studies, Noida. She is a well-known speaker, has a vast teaching experience and is a well-known researcher. She has contributed to chapters in books, journals, as well as authored a book on Public Service Relationships. She has a keen interest in Human Resource Management & Training.

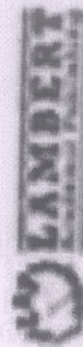
Savitri Mathur
Rajiv Chandra Mathur

Stress Stressors Stress Management



978-820-2-19716-8

Mathur, Mathur



9

11

East of the West: Repossessing the Past in India

INDIRA CHOWDHURY AND SRIJAN MANDAL

Almost nothing that would be recognised as public history elsewhere is identified as such in India. Despite its long and ever-increasing acceptance outside India as a discipline and a practice distinct from traditional academic history, it has yet to gain acceptance in India. Attempts to identify Indian activities, practices and outcomes – such as books, films, archival collections and exhibitions – that are self-consciously public history will not yield much fruit. Nor, necessarily, will trying to apply any of the many Western definitions of the term in the Indian context. Instead, this article will try to highlight the myriad forms that public engagements with the past have taken in India. It focuses specifically on museums, arguably the preeminent site

Public History Review

Vol 24 (2017): 22-37

ISSN: 1833-4989

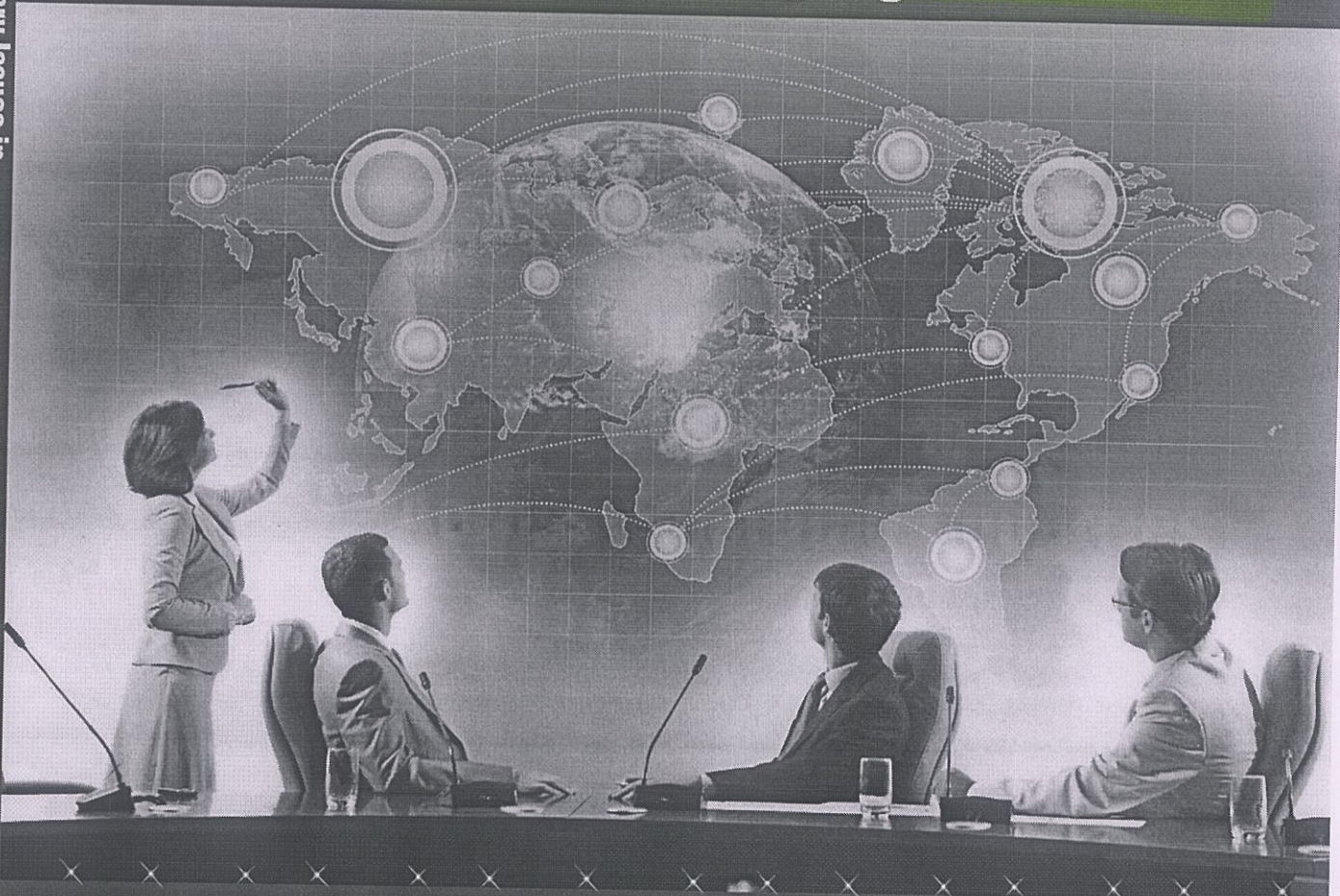
© 2017 by the author(s). This is an Open Access article distributed under the terms of the Creative Commons Attribution 4.0 International (CC BY 4.0) License (<https://creativecommons.org/licenses/by/4.0/>), allowing third parties to copy and redistribute the material in any medium or format and to remix, transform, and build upon the material for any purpose, even commercially, provided the original work is properly cited and states its license.

11



Contemporary Issues in Global Business Research Across Emerging Countries

Contemporary Issues in
Global Business Research Across Emerging Countries



Monograph Book

Prof. Zafar U. Ahmed
Dr. Sahil Raj

Mc
Graw
Hill
Education

Mc
Graw
Hill
Education

Editor
Prof. Zafar U. Ahmed

Co-Editor
Dr. Sahil Raj

CONTEMPORARY ISSUES IN GLOBAL BUSINESS RESEARCH ACROSS EMERGING COUNTRIES

Edited by

Zafar U. Ahmed

BBA (New York), MBA (Texas), Ph.D., (Utah),

Professor of Marketing

Department of Marketing

School of Business

American University of Ras Al Khaimah

Ras Al Khaimah

United Arab Emirates

and

President and CEO

Academy for Global Business Advancement

(www.agba.us)

Richardson, Texas, USA

Sahil Raj

AGBA Vice President for Global Publications

Assistant Professor of Management Information Systems

School of Management Studies

Punjabi University Patiala,

State of Punjab India



McGraw Hill Education (India) Private Limited

CHENNAI

McGraw Hill Education Offices

Chennai New York St Louis San Francisco Auckland Bogotá Caracas
Kuala Lumpur Lisbon London Madrid Mexico City Milan Montreal
San Juan Santiago Singapore Sydney Tokyo Toronto



McGraw Hill Education (India) Private Limited

Published by McGraw Hill Education (India) Private Limited,
444/1, Sri Ekambara Naicker Industrial Estate, Alapakkam, Porur, Chennai-600 116, Tamil Nadu, India

Contemporary Issues in Global Business Research Across Emerging Countries

Copyright © 2018, by McGraw Hill Education (India) Private Limited

No part of this publication may be reproduced or distributed in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise or stored in a database or retrieval system without the prior written permission of the publishers. The program listing (if any) may be entered, stored and executed in a computer system, but they may not be reproduced for publication.

This edition can be exported from India only by the publishers,
McGraw Hill Education (India) Private Limited.

ISBN (13): 978-93-87432-48-2

ISBN (10): 93-87432-48-3

Managing Director: *Kaushik Bellani*

Portfolio Lead—Business & Economics: *Nikhil Wadhera*

Associate Portfolio Manager—Business & Economics: *Chandrabhanoo Chakrabarti*

Production Head: *Satinder S Baveja*

General Manager—Production: *Rajender P Ghansela*

Manager—Production: *Reji Kumar*

Information contained in this work has been obtained by McGraw Hill Education (India), from sources believed to be reliable. However, neither McGraw Hill Education (India) nor its authors guarantee the accuracy or completeness of any information published herein, and neither McGraw Hill Education (India) nor its authors shall be responsible for any errors, omissions, or damages arising out of use of this information. This work is published with the understanding that McGraw Hill Education (India) and its authors are supplying information but are not attempting to render engineering or other professional services. If such services are required, the assistance of an appropriate professional should be sought.

Typeset at APS Compugraphics, 4G, PKT 2, Mayur Vihar Phase-III, Delhi 96, and printed at

Cover Printer:

Visit us at: www.mheducation.co.in

Introduction

Academy for Global Business Advancement (AGBA) is global association of professionals in the fields of business administration, commerce, economics, entrepreneurship, information technology, tourism, hospitality and recreational sectors. AGBA is an independent, non-aligned and not-for-profit, charitable NGO registered in the state of Texas (USA) with a worldwide network of more than 1000 members based across more than 50 countries that include scholars from reputed academic institutions, corporate leaders, governmental officials, entrepreneurs and consultants hailing from both western and emerging countries. AGBA, as a global organization, aims to help academics and scholars at business schools across emerging countries to connect with the western (developed) world for mutual benefit. Such collaboration would accelerate the process of globalization by furnishing ample opportunities to scholars in emerging countries to get recognition, disseminate new knowledge and assert themselves on the global stage.

AGBA's Vision

To be globally recognized as a leading “not-for-profit charitable NGO” dedicated to serve the academic, professional, government, corporate and entrepreneurial sectors worldwide.

AGBA's Mission

Building on the dynamics of the ongoing globalization process, AGBA is committed to provide a global platform aimed at assisting academics, scholars, professionals, officials, entrepreneurs and consultants of emerging countries to assert themselves on the global stage for recognition, networking and dissemination of knowledge.

AGBA's Core Business

- Nurture globally competitive talents; expertise and skills in academics across the emerging countries;
- Arrange apprenticeships for academics, scholars, professionals, officials, entrepreneurs and consultants on the global stage;
- Provide advisory services to upcoming business schools across the emerging countries for accreditation by the US based Association to Advance Collegiate Schools of Business (AACSB);
- Provide advisory services to peers worldwide to obtain “Fulbright Grants” from the US government successfully;
- Offer customized training and professional development programs globally;
- Act as a platform for the advancement of “Global Entrepreneurship”. and
- Act as a platform for the publications of scholarship in globally respected and world-class journals.

Contents

Sr No.	Title	Page No.
	<i>Introduction</i>	<i>iii</i>
	<i>Preface</i>	<i>v</i>
1.	Determinants of Library Service Quality: A Sri Lankan Perspective <i>K.R.N. Harshani, Zafar U. Ahmed, Ali Khatibi</i>	1–8
2.	How to Control Oil Prices and Reduce its Impact on Global Economy? <i>Osama Sam AL-KWIFI</i>	9–17
3.	Performance Decline, Political Connections and Institutional Factors: A Multi-Country Analysis <i>Toru Yoshikawa, Abdul A. Rasheed, Esther B. Del Brio</i>	18–30
4.	Electronic Word of Mouth (e-WOM) and Brand Equity <i>Mohd. Sarwar Alam, Dr. Bilal Mustafa Khan</i>	31–40
5.	Project Risk Management for Profitability <i>Dr. Rajwinder Singh, Dr. Satinder Kumar</i>	41–56
6.	An Empirical Study of the Determinants of the Demand for Life Insurance in Sri Lanka <i>S.K. Gamage</i>	57–68
7.	An Examination on the Success of Bilingual Science Teaching by Referring to its Context at Junior Secondary Level in Sri Lanka <i>J.S. Jayaweera, A.A.J. Fernando</i>	69–77
8.	Benchmarking Marketing Practices of Emerging Economies: The Case of the Arab world <i>Dr. Allam Abu Farha, Dr. Anan Abu Farha</i>	78–88
9.	Critical Success Factors for Developing Network Marketing Distributors in India <i>Dr. Bhavannarayana K, Dr. V. Mohan Kumar, Dr. Vijayalakshmi Kandala</i>	89–104
10.	Determinants of Consumers' Attitudes Towards Global Luxury Car Brands: A Sri Lankan Perspective <i>Sumith S. De Silva, Zafar U. Ahmed, Ali Khatibi</i>	105–115
11.	Capital Structure Immunize of Infect Value of the Firm <i>W.P. Wijewardana, A.A.J. Fernando</i>	116–122
12.	An Empirical Study on Factors Demotivating Farmers Towards Contract Farming in Indian Punjab <i>Harpreet Singh, Dr. Amanpreet Singh</i>	123–134
13.	Knowledge Spillovers in a Competitive Economy: A Study of Patents in Malaysian Firms <i>Farha Ghapar</i>	135–149
14.	Indian in Design, Global in Presence – Crafting Customer Experiences: A Study of Fabindia and Anokhi <i>Harleen Sahni, Priti Gadhavi, Dr. Bilal Mustafa Khan</i>	150–163
15.	Impact of Microfinance: A Survey <i>Arvind K. Jain, Julianna Fox</i>	164–176

Sr No.	Title	Page No.
16.	The Effect of Extroversion Personality Trait on Customer Attitudinal Loyalty in Selected Hotels within Nairobi City: Kenya <i>Julie Makomere, Wambui E. KaranjaNg'ang'a and Charles Lagat</i>	177–188
17.	Existing Obstacles of the Third Party Logistics (3PL) Market in Sri Lanka <i>Dr. M.A. Asoka Malkanthie, J.M.D.J.N. Jayamanna</i>	189–202
18.	Entrepreneurial Motivations as Determinants of Success – An Empirical Analysis on Women Entrepreneurs in SME's <i>Dr. Uma Rani Bade, Dr. B.Ratan Reddy</i>	203–216
19.	Destination Discontinuity for Sustainable Development of Tourist Destination <i>Gaurav Rana, Sushil</i>	217–226
20.	Customers' Perception of Technology-Enabled Banking Services in India <i>Liaqat Ali, Simran Jit Kaur</i>	227–238
21.	User Generated Content Analysis of Tourism Industry of Indonesia <i>Dr. Sahil Raj, Tanveer Kajla</i>	239–249
22.	Women Entrepreneurship and Empowerment through Circular Economy <i>Dr. Broto Bhardwaj, Dr. Kamaljeet Kaur, Zafar U Ahmed</i>	250–263
23.	Knowledge Management, Competitive Intensity and Customer Satisfaction Among Selected Hotels <i>Julie Makomere, Wambui E. KaranjaNg'ang'a, and Charles Lagat</i>	264–277
24.	Identification of Store Selection Criteria with Regard to Planned and Unplanned Agglomeration <i>Vikas Singla, Harpreet Rai</i>	278–285
25.	A Bankruptcy Approach to Support Decision on Allocation of Scarce Resources in Emergency Operations <i>Maher Itani</i>	286–299
26.	The Relationship Between Interest Rate and Stock Price: Empirical Evidence from Colombo Stock Exchange <i>Dona Ganeesha Priyangika Kaluarachchi, A. A.J. Fernando</i>	300–308
27.	Muslim Consumers' Halal Consumption Behaviour: A Further Exploration of the Antecedents of Buying Intention <i>Dr M Yunus Ali, Tan YinnWayne, Yap Keen Wye, Keith Piong Roc Wing</i>	309–320
28.	Education and Employability for Economic and Social Inclusion in India <i>D. Tripathi Rao, Swarnima Singh</i>	321–329
29.	Strategic Human Resource Management and Unit Human Capital: A Resource Based View in Indian Context <i>Dr. Asim Talukdar and Dr Anirban Ganguly</i>	330–346
30.	The Influence of City Marketing Performance, and Mayor Personal Branding on Tourist's Revisit Intention: The Case of Bandung City <i>Raden Rifqi Dwisanto, Poppy Rufaidah</i>	347–359

Teachers' 'other' language preferences: A study of the monolingual mindset in the classroom

Uma Maheshwari Chimirala

Introduction

Multilingual ambience with plurilingual appeal is a defining feature of Indian diversity. Its classrooms reflect the same diversity where sociocultural-economic-institutional interests meet learner-specific intentions and multilingual repertoires of resources. Such pedagogic contexts can evolve synergistic multilingual and multimodal assemblages of toolkits for information processing, thinking and knowing (Casterns 2015). However, institutional policies devalue this diversity and fallaciously trade it for monolingual instructional practices that favour skill in a single language, namely English. Consequently, teachers witness the co-existence of two contrasting realities in the same classroom: the presence of multilingual learner repertoires of resources and the institutional manifestations of the monolingual mindset. At the interface of the two realities teachers experience a tension between their obligation to abide by institutional norms and their inclination to sensitively cater to the learning needs of their pupils.

We believe that teachers possess the agency to choose practices where the institutional mandates are either negotiated, replayed, lived, manipulated or probably beaten. Nevertheless, making such choices is dependent on how teachers perceive learners' other languages in the classroom. In this study, 'other languages' refer to the use of any language other than the one mandated by institutional policy. For instance, teachers of Telugu/Hindi/Oriya/Marathi are instructed to teach in their respective languages. Similarly, in the English-medium school content subjects like mathematics, science and social science have to be transacted in English. However, if a language other than the designated one is employed this is an instance of the use of 'other languages'.

In a bid to understand how 'other languages' in the classroom are perceived by teachers, 276 language and non-language teachers were asked to respond to a survey questionnaire on their other language use and preferences. Following the survey, 40 of these teachers participated in an open-ended interview that probed the reasoning behind their use of other languages and their preferences. Based on a thematic analysis the study presents the teachers' implicit language ideologies that mediate their language use/preferences in the classroom.

In the rest of this chapter, we begin by locating learner diversity in the context of the monolingual mindset, where ideological preference for 'a' language manipulates learning opportunities and resources. As an instance of the workings of the monolingual mindset, educational 'programming' in Andhra Pradesh is discussed. Next, the research study is described briefly and the findings are presented in three sections. The findings are followed by an extended discussion with conclusions.

Learner diversity in an omniscient monolingual mindset

Any description of a monolingual mindset (MM) needs to explicate who a monolingual is. Given the paucity in research descriptions of a monolingual (Ellis 2008), Richards and Schmidt (2002) define a monolingual as one who 'knows and uses one language ... though possesses a passive knowledge of others.' A mindset that reinforces 'the one language' norm for a person or community constitutes a MM (Crystal 1987, 425). According to Clyne, the MM 'sees *everything* in terms of a single language' (Clyne 2008, 348). It evolves fallacies that affect the curricular space, attention and value accorded to languages; it has an 'insurmountable difficulty' in seeing the interdependence in literacies and it propagates the self-sufficiency of English (Clyne 2008, 356). In short, the MM manipulates the educational space in favour of monolingual abilities in a single language as against multilingual capabilities, despite research evidence indicating the disadvantages of such an approach.

Research from the West recognises the presence of Multilingual Learners (MLLs) in the classroom as a 'superdiversity' (Vertovec 2007), a nexus of diverse sociocultural-cognitive-linguistic variables which possess a pedagogic potency to initiate unique learning assemblages (Casterns 2015; Orellana et al. 2011). Practitioners teaching MLLs find that monolingual instructional practices (that relegate their other languages as hurdles in learning) fail to provide positive cognitive support for learning and hence call for the need to examine ways and means of how the MLLs' linguistic repertoires can be meaningfully leveraged for academic requirements (Orellana et al. 2012; Cummins 2007; Garcia 2009). Consequently, research investigating MLLs' use of other languages in the classroom has convincingly established that MLLs possess a rich range of repertoires of resources which they use flexibly by shifting registers/styles/modes between speakers and situations (Orellana and Garcia 2014). They leverage their repertoires for several reasons such as to mitigate the complex processes while writing especially for word searches (Sathuvalli and Chimirala 2013), to make sense of their multilingual worlds (Martinez et al. 2008), to counter the dichotomies of home and school and to make sense of and access school knowledge (Orellana and Reynolds 2008) and to challenge the deficit perceptions of their experiences and capabilities in their school practices (Alim 2004).

Despite robust evidence as to how MLLs leverage their linguistic repertoires as toolkits for accessing knowledge, research clearly indicates that monolingual mindset ideologies are under the surface even when overtly extending support to learners' languages as a pedagogic resource (Hornberger 1989). Even in official bilingual educational programmes the curricular objective for MLLs is to attain monolingual capability in English vis-à-vis their stronger languages for 'auxiliary learning' (Madiba 2013). In any case, the 'other' language capabilities are either seen as a crutch or a scaffold that MLLs have to bypass. Thus the MM treats MLLs like several monolinguals-

in-one and imposes upon them a monolingual portal to access learning, to make sense of the world and to identify with it. This expectation is symptomatic of an MM that sets into action discourses that endorse a 'single language' while progressively activating mechanisms that will erase the presence of other languages.

The 'single language' in former colonies of Asia and parts of Africa¹ is the taken-for-granted language of academics – English (Carli and Ammon 2007) – and India is no exception. English is the cynosure of perpetual curricular planning, reinforcing it as *the* language of the 4Es: education, employment, economy and empowerment. Unquestionably, ideological propagation and a polity that would manipulate acceptance of English univocally have to be in place. The National Knowledge Commission Report (NKC 2007) is one such influential document that endorses the hegemonic position of English. The NKC, a high-level commission constituted in 2005 for transforming India into a knowledge-based society, isolates proficiency in English as the single 'most critical determinant' to access education and progress (NKC 2007, 6). The linguistic singularity reflects the MM in the report where 'English' occurs 44 times while the 'mother tongue' occurs once.

School-leavers who are not adequately trained in English as a language are always at a handicap ... disadvantage is accentuated further in the world of work, not only in professional occupations but also in white-collar occupations overall. (NKC 2007, 48)

The NKC (2007) mandate that a person needs to be functional in English in order to access educational advantages is *not* being questioned here. It is the endorsement of 'only English' as the legitimate language of access to opportunities – despite several models that are pedagogically sensitive to the multilingual realities of the learners being available – which is to be questioned (Setati et al. 2002). With ideological discourses perpetually ignoring the cognitive advantages of other languages for learning, the MM is permeated in its exclusive concern over English literacy through two powerful strategies, as noticed in the case of Andhra Pradesh² (AP), India.

The first strategy can be described as 'affirmation through conversion'. 'English only' Government Orders which herald English as the tool for social justice are churned either as affirmative action (Lin 1997) or in response to a 'demand for English' (Janks 2009), though no documentary evidence of this alleged demand is available³. For instance, Government Order (GO) 23 mandates that the mother-tongue medium *Kasturibaa Gandhi Balika Vidhyalayas*⁴ (KGBVs) in the state of AP for girls from 'rural, backward and socially marginalised areas/groups; from single parent families; and from urban deprived locations' should be converted to English-medium schools from the 2015-2016 academic year (*TeachersBadi.in* 2015). The reason cited in the GO was 'Girls studying in the KGBV need to be equipped with necessary skills in English so as to enable them to be able to compete with their peers in their academic pursuits.' The proposed action plan included the creation of new textbooks in English and the conduct of in-service training was to be imparted only in English. The official game plans endorsed early, exclusive and extensive exposure to English as a universal solution to overcome disadvantage (Lin 1997), irrespective of the learning context and individual learner linguistic realities; this is a clear manifestation of the MM.

The second strategy consists of manipulating classroom practices through in-service training. Educational programmes implemented in AP since 2005 expect teachers to adopt 'learner-centred' techniques so that learners' repertoires are leveraged as they engage in problem solving and thus develop subject-specific and language competencies (Department of Elementary Education 2011, 33). In contrast with this objective, in-service training for teachers aims to regulate and modify teacher behaviour in the direction of monolingual instructional practices that manipulate learner cognitive resources for learning. For instance, in December 2011 one-day training on how to use the learners' L1 to teach English was arranged for all teachers of English. Yet in May 2012, English teachers of Classes VII-X were deputed to attend a one-day training session on Communicative Language Teaching where recourse to the learners' L1 was not encouraged. In both training sessions teachers raised questions regarding the relationship between languages (L1 and L2) and the relationship between language and access to knowledge and learning, but their questions were unanswered⁵ – yet another sign of the MM where the institutional ideological predilection selects and recontextualises tenets of information that suit its ideology and regulates the modes and degree of dissemination so that alternative knowledge is neither disseminated nor highlighted (Bernstein 1990).

In sum, the MM conspires to homogenise diversity by manipulating classroom transactions. MM clearly has a detrimental effect on the cognitive and affective well-being of learners since it restricts learners from realising their full learning potential by manipulating the potential support systems their linguistic repertoires can render. Additionally for children whose language of instruction differs from the language of home, 'English' ideology is out of step with the objective of evolving and sustaining a knowledge creating society (NKC 2007) and also acts as a device to ensure that learners are deprived of education and 'pushed out' of the classroom and eventually out of school (Setati et al. 2002; Mohanty 2017). Such a scenario contradicts the multilingual reality of the society and the classroom and the constitutional promise of equality in access to opportunities in schools and work place.

The study

Here we briefly present the research questions which the study sought to answer, the participants in the study, the data collection procedures and the data analysis procedures. The findings are presented in three separate sections.

As a rule, teachers are bound to implement educational policies, but at the same time they are not mere 'cogs in the policy wheel' (Mohanty et al. 2010). Teachers possess the agency to either conform to the mandated norms or to choose alternatives that are sensitive to the MLLs' plurilingual capabilities. However, teachers' perceptions of the pedagogic efficacy of the 'other languages' in the classroom have to be negotiated. This study, a step in that direction, explores teacher perceptions of the 'other languages' by asking the following questions:

- Do teachers use other languages in their classroom transactions? Why/Why not? Is there a preference for specific languages? Why?
- Do teachers 'allow' their learners to use other language in class? Why/Why not?

We chose to analyse the responses using the theoretical frame proposed by Ruiz (1984). This framework has been used extensively to examine language policies across countries. We use the framework to understand teachers' reasoning in 'allowing' learners to use other languages because the framework captures and reflects orientations to learners' languages as a problem, as a right or as a resource.

Details of the 276 teachers who participated in the study are shown in Table 1; 132 were trained teachers of other subjects (social science, maths, science and computer studies) while the remaining 144 were trained language teachers. The respondents' mean duration of teaching experience was 10.6 years. The teachers had all participated in at least one in-service training activity and they were all employed in English-medium state schools in the state of AP.

Table 1: Distribution of language and non-language teacher respondents, by subject and phase

Teachers	Subject	Phase	
		1: survey	2: interviews
Non-language	Social science	38	4
	Maths	34	6
	Science	35	5
	Computer science	25	5
	<i>Sub-total</i>	<i>132</i>	<i>20</i>
Language	English	48	6
	Marathi	12	3
	Oriya	18	3
	Hindi	32	3
	Telugu	34	5
	<i>Sub-total</i>	<i>144</i>	<i>20</i>
Grand total		276	40

The data were collected in two phases. We followed a cascading technique of data collection where participants of the study were requested to encourage their colleagues in other government schools to participate. In Phase 1 a questionnaire was used; respondents answered questions about their 'other language' preferences and their reasons for using these other languages. In Phase 2 a total of 112 teachers were invited to participate in an open-ended interview; 73 consented but only 40 could be interviewed due to logistical or participants' personal reasons. Four of the interviews took place by telephone but the rest were carried out face-to-face. The interviews were conducted in Hindi and Telugu. Responses were transcribed in the original language and then translated into English. The translated version was checked by a translation researcher and then variations were identified and resolved.

Preliminary analysis of the teacher responses to the two questions revealed that

treating the responses as one unified set would not capture the complexity in the multi-layered belief systems of the teachers. Therefore, the interview responses were categorised into two data sets. The first set documented the reasoning behind teachers' use of and preferences for other languages. The second set documented teachers' reasons for 'allowing' or 'not allowing' their learners to use other languages. The first set was analysed using the open coding option available in ATLAS.ti.2.0 software. With the second set, we used the axial coding strategy; that is to say, our codes were derived from the theory which we had adopted (Ruiz 1984). To enhance reliability in coding, the analysis was redone after a gap of one month and randomly cross-checked by a fellow researcher. Overlaps in categories were identified and resolved.

Findings 1: Questionnaire responses

The responses to the questionnaire survey are described statistically. Table 2 shows that 95 per cent of participants used other languages in their classrooms while only five per cent claimed to use only monolingual instructional practices. The 14 respondents who said that they abstained from using other languages were all language teachers⁶. Similarly, when respondents were asked about whether they 'allowed' their learners to use other languages, 29 per cent assert that they did not while 71 per cent did so. Table 2 highlights a tension in teachers' validating of learners' linguistic repertoires. What triggers this variation in responses?

Table 2: Responses to questions about teachers' use of other languages (n=276)

Questions	Yes	No
Do you use other languages in the classroom?	262 (95%)	14 (5%)
Do you allow your learners to use other languages?	193 (71%)	83 (29%)

When asked which other languages they used in the classroom, none of the teachers said that they used English, as Table 3 reveals.

Table 3: Which languages do you use in the classroom? (n=262)

English	Regional languages (Telugu/Oriya/Marathi)	Hindi
0	183 (69%)	79 (31%)

When we probed which teachers were using which 'other' languages we noticed the pattern which is presented in Table 4: it appears that the regional languages are preferred over English and Hindi, but why? This is the core of this chapter. Recall that, according to Table 2, 14 teachers claimed to follow monolingual instructional practices.

Table 4: Which teachers used which other languages in the classroom?

Subject taught	English	Regional languages (Telugu/Oriya/Marathi)	Hindi	Non-language subjects
Classroom language	Regional languages	Hindi or regional languages	Regional languages	Regional languages

The reasons which teachers gave for their use of 'other' languages are summarised in Table 5. Facilitating comprehension by explaining concepts and difficult words was the most frequently mentioned reason while drawing learners' attention to nuanced variations in concepts was the least frequently mentioned.

Table 5: Teachers' purposes in using 'other' languages

Purpose of using 'other' languages	Responses (%)
1 Explain concepts and difficult words	69
2= Reprimand or bond with the students.	11
2= Check comprehension	11
3 Help learners understand the expected response to the questions	5
4 Provide feedback	3
5 Draw attention to contrastive aspects of concepts	1

The qualitative interview data which probed the reasoning behind teachers' use of other languages and their allowing or not allowing their learners to use other languages are analysed next.

Findings 2: Why do teachers use or not use other languages in the classroom?

What reasoning guides the teachers' use of and preference for other languages other than that mandated by the state? Two themes with several sub-categories emerged: *pedagogic justification* and *ideological justification*. A total of 26 teachers gave answers relating to learning while 14 teachers said that their reasons for using or not using other languages were reactions to official mandates on policy and practice.

Pedagogic justification: Language should not be an obstacle to teaching and learning

A total of 19 from 26 teachers, all teachers of non-language subjects, said that they used other languages in their classrooms in order to help learners to access complex concepts.

In Data Extract 1, for example, Respondent MT11 explains how the mandated language of instruction contributes to the difficulty involved in understanding the concept. He is aware of the linguistic diversity of his classrooms and that his choice of 'auxiliary language' is mediated by several reasons: 'not grappling for words' and

being able to ‘sustain’ the lesson; to be able to reach out to most of the learners; to ensure access to the concept; and his linguistic capability to transact the concept and complete the syllabus.

Data Extract 1
<i>Teaching mathematical concepts is twice complex because it involves the abstract concept and decoding the language to understand the concept. So we have to deal with two problems: the problem of language which is English and the concepts for doing the ‘problem’ itself. If I use English ... I will probably never reach out to most of the learners and may not finish the syllabus too. So Telugu is my natural choice ... it is my mother tongue and I cannot be grappling for language in explaining concepts nor can I let my learners struggle with language because I teach Math. (MT117)</i>

Pedagogic justification: Language choice for participation

Seven of 26 teachers claimed that language choice is of paramount importance in helping students to participate actively.

Data Extract 2
<i>I know how difficult it is to understand concepts in trigonometry or wave motion if you cannot follow English – you just cannot participate in the lesson. LEP expects participation but through English. Unless you know English well, you cannot. I speak Lambada and three other languages ... I ask which language the learners can follow and teach first in that language then repeat in English. I do have some tribal learners whose language I am now learning. Once I know Savara⁸ I can teach them better and write materials for them. (ST16)</i>

In Data Extract 2, ST16 – a science teacher in a tribal area – underscores the relationship between learner participation and the language of instruction. She contends that, by strategising her teaching first in the language chosen by the learners and then in English, she facilitates comprehension and participation. She explains that leveraging her multilingual abilities has twin benefits: it works as a strategy for capacity building and supports participation. She believes that the learners’ language is the most accessible way to get learners involved and ends her reasoning emphatically by highlighting the need to cater to tribal learners.

Ideologies-in-action: Maintaining linguistic purity

Fourteen from 40 teachers give responses which pertained to mandates in policy or practice (Data Extract 3). Two of these teachers justify their choice of not using any other language in this way, citing the following: the importance of exposure to literary language, their own personal learning experiences, upholding the purity of the language and being a language model for their students. However, TT04 adds an intolerant attitude towards other languages in his response.

Data Extract 3

I speak/teach Telugu, the Italian of the East. I am a model for my learners. I speak as we heard it from our teachers in school and college – the literary language – and teach that Telugu. As per rules, I have to do so. I don't dilute it the way you people do by bringing in Hindi or English. I cannot allow that but learners are picking all that hybrid⁹ language from TV and write that even in their exams and I can do nothing. (TT04)

In the excerpt, TT04, a teacher and also a columnist in a Telugu newspaper, underscored the language of instruction as a 'rule'. Correspondingly any code-mixing or switching, in his view, counts as a 'hybrid' language practice which 'dilutes' the purity of the language. He is intolerant of such 'diluting' as he sees himself to be a model language user. He categorically declares that he does not 'allow' learners to use other languages yet he cannot prevent this from happening too.

Ideologies-in-action: Reversing the terminological deficiency

Four teachers emphasised their non-use of other languages in teaching. They saw this choice as a way of reversing the negative impact of English – constitutionally mandated as the language of higher education – on the development of Indian languages. An example can be seen in Data Extract 4.

Data Extract 4

Indian languages have not been the voice of higher education because our Constitution chose English. Why English only? ... when complex mathematical concepts and medical knowledge were written in Indian languages. We have literary concepts to discuss in the textbook and I teach them in Marathi. Our languages do not suffer from terminological deficiency. I expect my learners to know that too. (MaT83)

MaT83 argues that the constitutional preference for English removed any possibility of using Indian languages in higher education, even though complex technical concepts are written in Indian languages. The respondent questions the position of English as 'the' language of higher education and argues that learners need to know that Indian languages have similar potential. To this extent she positions herself as a languaging model.

Ideologies-in-action: The question of preservation and access

Three teachers were aware of the presence of tribal children in their classes and pointed to the tension in choosing preservation over access. An example is found in Data Extract 5.

In Data Extract 5, ET32 an English teacher, from the same tribal community as the learners, connects access to the language of school to access to the learning space to reiterate his ideology that, with English, learners can improve themselves. He

Data Extract 5

As a speaker of Savara, I know the rich oral tradition that my tribal community has and realise the need to preserve it, but Savara is not taught in school nor is it the medium of instruction for subjects like Maths ... But these children have to go to college and university from here, so English is necessary ... 45 out of hundred finish school; twelve go on to intermediate college; three go to a college and from this area none have gone to a university like yours. These children need access to development and that is through English. So I deliberately connect English lessons to Savara or maybe Oriya, not Hindi. (ET32)

projects the tension between the need to preserve tribal languages and being able to access educational opportunities through English. He asserts that English is the route to opportunities and development for his community and through statistical description underscores that not many learners manage to access higher education. Though he acknowledges that he supports learning by using other languages, his preference for Savara/Oriya and not Hindi represents an idiosyncratic language policy that views other languages as a crutch that eventually has to build English capabilities.

Ideologies-in-action: Reaction to 'English-only' ideology

As Data Extract 6 shows, five teachers indicated that their decision to use regional languages and/or Hindi is a reaction to the excessive impetus on English.

Data Extract 6

You are an English teacher and your subject is hyped. So I assume you expect me to tell that I use English in teaching Marathi, but I don't. I use Hindi or ask them to think how a tense works in their language. Too much of English and English training is stressed. Is that right? Fair? Is teaching English language the only curricular concern? Not our languages? Why? We rarely get opportunity to access the new knowledge of learning ... I wonder why other languages cannot benefit from it? (MaT09)

MaT09 asserts that her use of languages other than English is a reaction against excessive attention to English. According to her, the teaching of English is 'hyped' to the extent that the dissemination of research and 'good' practices is construed as if *only* English can benefit. This respondent raises several questions: whether teaching English is the only curricular concern; whether focusing on the English language alone is fair to learners, teachers and the Indian languages; and why teachers of other languages are unable to benefit from research.

Findings 3: Why do teachers allow or not allow their learners to use their own languages in the classroom?

All 40 teachers said that their learners are free to use their own languages outside the classroom. However, the choice of words used by teachers needs special attention as it shows that teachers seem to identify a number of narrower language

use spaces within the school space. The use of other languages in those other spaces is not their concern, but the language of the classroom definitely is. For example, one of the teachers said, 'We *do not mind* their language in the playground.' Another said, 'They are *free* to use any language outside.' Another respondent gave this rather elaborate response:

*Though we **could instruct** our learners to use English in the ground, we **do not do so**. Our **concern** is the language of the classroom not the playground or lunch period so why instruct there when nothing academic happens? (emphasis added)*

On the other hand, when asked whether they would 'allow/not allow' learners to use their own languages *in* the classroom teachers had their justifications in place. Three strands of justification emerged, concerning language as a resource, language as a right and language as an impediment (Ruiz 1984).

'Allowing' learners' use of other languages as a resource

Of the 40 interviewed respondents, 24 viewed learner languages as a resource for facilitating understanding and participation in classroom activity. For instance, three teachers had witnessed their learners talking to themselves in their home language while doing calculations or carrying out complex parts of mathematics problems. Furthermore, eight teachers had heard their learners explain concepts in different languages to their peers. All of them agreed that learners' multilingual abilities play a positive role in problem solving, as Data Extract 7 illustrates.

Data Extract 7

I do not interfere with what learners do and how they do the problem once I assign the problem for class work. Each of us has to understand the concept and retain it in our own way. If they are able to voice whatever they understand, get others like them to listen to that and in the process check it and finally apply it, I think they are actively involved in their learning. Any interference in their talk or asking them to use one particular language is disturbing their thought process. It's stopping them from deep learning. How does it matter what language is used? Are they problem-solving? That is my concern. (CST142)

In this extract, Teacher CST142 asserted that the question of language is not her concern. Therefore, she does not 'interfere' with the language of any lesson-related discourse learners are engaged in. She asserts that 'allowing' them to use *any* language(s) they have access to is 'allowing' them to achieve deep learning, which is exactly what she wants.

Four teachers of science reasoned that if their learners had 'weak or not good' English proficiency this was a valid justification for allowing them to access concepts in physics, chemistry and biology through their other languages. An example is given by Teacher ST17 in Data Extract 8.

Data Extract 8

Science is experience first and then analysis next. If learners are plurilingual, they can access a concept through languages or a combination of other modes. Restricting or stopping them from using their languages is curtailing their sense-making and thinking – how will they abstract the concept? In a way aren't we forcing rote learning rather than understanding? (ST17)

ST17 explains that science is 'experienced first and then analysed next'. Whether it is buoyancy or metals or cell division that is the focus of attention, these phenomena are processed and understood as experiences in their home languages before they become concepts in class. Allowing learners to process such concepts in their language is therefore empowering. Not permitting this would be to 'curtail' their learning and enforce rote-learning. Teacher MT242 takes this argument further in Data Extract 9.

Data Extract 9

Being registered for a research degree in education of math for visually-challenged I am aware of how visually challenged learners process math concepts like algebra and trigonometry. They use a combination of sensory stimulus, perception and language – any language can do it – not just English. Why nobody told us that in BEd? Learners' use of their language is analogous to the sensory input for a blind person because they register events in their senses to which their languages serve as inputs. We know that now – visually challenged assign their own understanding to the shapes. Similarly my learners' use of their strong language is definitely a tool to process the concept. Letting them use that language is letting them into the classroom otherwise they will be out of the lesson and maybe school too. (MT242)

Though several teachers pointed out the reality of linguistic diversity in their classrooms and how they supported it, MT242 was the only teacher who questioned why research into and findings of multimodal ways of learning were not disseminated in pre-service and in-service teacher training programmes. He argued that if such routes were legitimised then the approach of learning only through English would no longer be sacrosanct. In that case there was a likelihood that we would begin to see learner languages widely recognised as resources. Teacher MT242 argued that allowing learners to draw on their multilingual abilities would help them to sustain their attention in class and this in turn would minimise the 'language divide' which leads to learners being 'pushed out' of classrooms (Mohanty 2010).

'Allowing' learners' use of other languages as a right

Three teachers claimed that their learners had the right to use any language in the classroom to engage in the lesson. An example is MaT73; see Data Extract 10.

In Data Extract 10, MaT73 complains about the uncritical, imitative deployment of practices from English-speaking nations and regrets that there has been no effort to evolve pedagogies sensitive to the local context. Further, she is of the opinion that

an imitative culture is thrust on teachers through their training. Not only does she underscore the violation of the primary principle of pedagogy but implicitly hints at the detrimental impact that this has on learning; she also suggests that current practice is a violation of one of the fundamental rights bestowed by the constitution.

Data Extract 10

It is their constitutional right to be taught and to learn in the language they know – the first principle of learning: start with the known. That is what they do in all the English-speaking nations – educate children in their mother-tongue and then introduce foreign languages. They do not start with an assumedly valuable commodity called English. But we don't see that logic, instead the Department encourages 'English and English-only' practices and gets our teachers trained in them instead of finding suitable ways to teach and empower. (MaT73)

Another aspect is raised by Teacher TT32 in Data Extract 11. This teacher asks whether it is even possible to restrict the language of the talk that is happening in the learners' head as they attempt to 'survive' the system. According to her, learners' use of other languages is a strategy which they adopt in order to beat systemic disadvantages. She believes that the language that they choose to use is the language of learning, of making sense, of trying to gain access to knowledge and of trying to 'pass' the system.

Data Extract 11

In my context the language of instruction is neither a language widely used in the society nor their home language then how will they make sense of the science and computer class? This is the flaw in the system where learners have to learn in an alien language. What will the learners do? Use whatever resources are available for making sense, learning and surviving the system. I wonder if we can even stop them from using Telugu in the sub-vocal talk at all. (TT32)

'Allowing' learners' use of other languages is an impediment

In stark contrast to those who see other languages as a resource and a right, 13 language teachers gave a variety of reasons to support their perception that their learners' use of other languages was an impediment to their learning of English. An example is Teacher ET67 (Data Extract 12).

According to Teacher ET67 English can make a difference across the generations. This teacher claims that, for her learners, English has a surrender value equalled by no other Indian language. Therefore she questions why she should allow learners to use their language when it is English that they need to access higher education.

Data Extract 12

Does using other languages have an economic value? These children belong to disadvantaged sections which need to be able to access education. Higher education is in English, so that is what has to be enabled. Why will I let them turn to their language when all we want is for them to learn English? For these children English becomes the factor that makes a difference not just now but across generations. (ET67)

Data Extract 13

I teach Oriya to tribal children here. Government gives free education and scholarships for higher education. If these students have to get there that will happen only with English. Why would learners want to use their own languages when they know that their progress depends on their knowing English? How will their use of other languages help in their learning of another language? Tell me where will Savara take them in their education even if we allow them to use it in class? (OT03)

An alternative perception is offered by Teacher OT03, as we can see in Data Extract 13. Unlike ET67, OT03 does not merely assert the value of English for accessing higher education and federal support which make that possible. He raises the issue of learners' motivations for learning any language when he rhetorically asks why a learner would want to use any other language other than English when he knows its socioeconomic value. Despite the fact that he teaches Oriya (a regional language) to learners who are Savara speakers, he explicitly states that every other language in the classroom will be seen as an impediment in a learner's journey towards possessing English.

Discussion

This study has explored teacher perceptions of the efficacy of learners' other languages in the classroom by asking two questions: Firstly whether and why teachers used other languages in their classroom and then whether and why teachers 'allowed' their learners to use other languages. The teachers based their beliefs about the use or non-use of other languages on two arguments: a pedagogic justification which aimed at enabling learning and an ideological justification referred to institutional policies and mandates. The study has found that the majority of teachers claim to use other languages in the classroom to accomplish several purposes (summarised in Table 5). In this aspect this study corroborates research that investigated the purposes of teachers' code-switching in the classroom (Cook 2001). However, the reasoning behind these various purposes ranged from appraisal of learners' linguistic capabilities to distinctive reactions to State educational policies and mandates.

Teachers operate in a context of overt linguistic hierarchy that places English at the top of the pyramid and every other language subservient to it. Inevitably, therefore, their attitudes and practices regarding language are influenced. Those teachers who preferred to maintain linguistic purity cited the need to promote their languages as a reaction against the official discourse that social justice and access to employment

and educational opportunities can be routed *only* by possessing skills in English. Correspondingly, traces of the monolingual mindset are evident in the preference for a specific language both in their use and in allowing their learners. This choice of language appears either to be a resistance to 'English preference' in the policy or to follow the mandates. Responses to the second question substantiate this point. While some teachers valued multilingual competence in their learners, others – despite valuing other languages – questioned the efficacy of these languages for learning. Some teachers questioned outright why other languages needed to be valued when all that their learners required was competence in English. Here is yet another manifestation of the MM which has an insurmountable difficulty in seeing the interdependence of language capabilities. Such perceptions could breed separatist practices that manoeuvre the cognitive routes and resources for learning and knowing in MLLs especially when research finds that bi/multilinguals are *not* two monolingual in one and that they manipulate their processing modes to suit their needs (Grosjean 1989).

Recall how TT04 perceived code-switching to be a 'hybrid practice' that should not be encouraged. In contrast, MT242 argued that multilingual and multimodal ways of learning are natural and that they need to be legitimised (in circumstances when they are not). Further, several teachers underscored the relationship between learner experiences and the coding of those experiences in their strongest language. While ST17 stressed the value of such experiences as leverages for engaging in classroom activity, CST142 argued that it allows for deep learning. Meanwhile, MT242 warned that the inaccessibility of educators' language of transaction coupled with the imposition of restrictions on the learners' language of thinking and meaning-making could have dire results, such as learners being pushed out of the learning space and eventually from the school space (Mohanty 2017). These teachers argue that learners' languages are the primary coders of their 'sensory stimulus and sensory experiences' (MT242). Though they do not refer to conceptual constructs such as BICS and CALP (Cummins 2008), they intuitively indicate that learners' access to academic concepts is bound to their experiences coded in other languages and that, if learners have to connect to the lesson, they should be allowed to use their multilingual repertoires.

This diversity in teachers' reasoning brings to the fore two significant concerns. The first concern is that research on the inextricably interdependent nature of the languages used by bi/multilingual learners and how learners draw on these languages in assembling their multilingual repertoires for their learning (Garcia 2009; Cummins 2008) has not been disseminated (Alim 2004). Therefore awareness of the interdependence between languages and the cognitive benefit that these languages can accord remains unexploited by teachers. The second concern is that teachers' conscious decisions and justifications reflect an idiosyncratic monolingual mindset that seems to support separatist practices; these ideologies are in part driven by pre-service and in-service programmes.

Conclusions

One cannot but note the conflicting discourses within the data inasmuch as some teachers acknowledge the positive pedagogic value of other languages while other teachers question the value and legitimacy of other languages for learning and yet

other teachers – despite recognising them as cognitive assets – are apprehensive about using them for pedagogy since, according to them, English is more highly valued. The study has thus identified multilayer complex reasoning in teachers' perceptions of the efficacy of other languages in the classroom.

The study has also found that there were more teachers who said that they did not allow their learners to use other languages than there were teachers who claimed not to use any other language in the classroom. Why? Such monolingual bias in teacher perceptions could be because they are products of the monolingual mindset themselves in their own schooling and the teacher education programmes which they have experienced.

Additionally, teachers are subjected to in-service training sessions that advocate selected methodologies and techniques as sacrosanct sure-shot practices that will deliver monolingual-in-English capability. One of our teacher respondents questioned the efficacy of 'methodologies and techniques' in developing English competence and the exclusivity in developing only English. Has the efficacy of these programmes been evaluated? Why then, as he questioned, was the pedagogy of their languages and their professional development neglected? Is this study indicative of a case of institutional planning versus learners' plurilingual capabilities?

The study has shown explicitly that teachers could be key players in recognising learners' languages either as a resource or as an impediment and that they could play a significant role as agents of change in multilingual classrooms by viewing learners' linguistic repertoires as cognitive resources, provided that teachers be 'allowed' to uncover, analyse and question ideologies. To this extent, courses in teacher education have to be designed in such a way that teachers become aware of their own ideologies and contribute to their learners' empowerment and self-regulated access to educational opportunities.

Notes

¹ Despite a multilingual educational policy in elementary education and higher education in South Africa, English still continues to dominate the educational space (Madiba 2013).

² Andhra Pradesh, a linguistically diverse state, houses 13 Schedule VIII languages and ten tribal languages namely Savara, Lambada, Yerukula, Gondi, Khond, Koya, Kui, Parji, Kolami and Kanda (<http://tribal.nic.in>). With 106,174 Government schools in which 1,987,564 linguistically-diverse learners are enrolled, AP faces nothing less than a challenge in educating them. In 2015, AP was divided into AP and Telangana. The data used in this chapter pertain to five districts of AP and two districts of Telangana.

³ A retired Education Officer reported that he had taken part in a survey in 1996 to confirm a demand for English in AP. However, no evidence of the survey was available with the State Council for Educational Research and Training AP.

⁴ Translation: Kasturibaa Gandhi Girls School.

⁵ During their interviews two respondents (MT11 and ST16) referred to this training session which had been attended by their colleagues.

⁶ All 14 respondents participated in Phase 2.

⁷ Each individual respondent was given a code consisting of three components: (First letter of

the subject/language taught) + T (Teacher) + (Identity number). The subject codes are: CS = Computer Science, E = English, H = Hindi, M = Mathematics, Ma = Marathi, O = Oriya, S = Science, SS = Social Science, T = Telugu. For example, MT11 and ST16 are teachers of Mathematics and Science respectively.

⁸ Savara is a tribal language spoken in parts of AP.

⁹ TT04 uses a phrase *sankara jathi bhasha* which means 'hybrid or mutated version of languages' or 'language of hybrids'. Consultations with a native-speaker translator revealed that the *sankar jathi* is a derogatory expression often used to refer to inferior races and cultures.

References

Alim, H.S. 2004. *You Know my Steez: An Ethnographic and Sociolinguistic Study of Style Shifting in a Black American Community*. Durham, NC: Duke University Press for American Dialect Society.

Bernstein, B. 1990. *Class, Codes and Control: Volume 4: The Structuring of Pedagogic Discourse*. London: Routledge.

Carli, A. and Ammon, U. 2007. *Linguistic Inequality in Scientific Communication Today*. Amsterdam: John Benjamins.

Casterns, A. 2015. Developing a multilingual mindset: Promoting the development and use of students' strongest languages and empowering them in English as the academic lingua franca. Inaugural address, 10 September. Pretoria: University of Pretoria Institutional Repository. <http://repository.up.ac.za/handle/2263/50087?show=full>

Clyne, M. 2008. The monolingual mindset as an impediment to the development of plurilingual potential. *Sociolinguistic Studies* 2(3), 347-366.

Cook, V.J. 2001. Using the first language in the classroom. *The Canadian Modern Language Review* 57(3), 402-423.

Crystal, D. 1987. *The Cambridge Encyclopedia of Language*. Cambridge: Cambridge University Press.

Cummins, J. 2007. Rethinking monolingual instructional strategies in multilingual classrooms. *Canadian Journal of Applied Linguistics* 10(2), 221-240.

Cummins, J. 2008. BICS and CALP: Empirical and theoretical status of the distinction. In B.V.Street and N.H.Hornberger (eds), *Literacy (Encyclopedia of Language and Education, Volume 2)*, 71-83. New York: Springer Science + Business Media LLC.

Department of Elementary Education. 2011. *Programme Evaluation Report: Children's Learning Acceleration Programme for Sustainability Andhra Pradesh*. New Delhi: National Centre of Educational Research and Training.

Ellis, E.L. 2008. Defining and investigating monolingualism. *Sociolinguistic Studies* 2(3), 311-330.

García, O. 2009. Education, multilingualism and translanguaging in the 21st century. In A.K.Mohanty, M.Panda, R.Phillipson and T.Skutnabb-Kangas (eds), *Multilingual Education for Social Justice: Globalising the Local*, 128-145. New Delhi: Orient BlackSwan.

Grosjean, F. 1989. Neurolinguists, beware! The bilingual is not two monolinguals in one person. *Brain and Language* 36(1), 3-15.

Hornberger, N. 1989. Continua of biliteracy. *Review of Educational Research* 59(3), 271-296.

Janks, H. 2009. *Literacy and Power*. New York: Routledge.

Lin, A.M.Y. 1997. Hong Kong children's rights to a culturally compatible English education. *Hong Kong Journal of Applied Linguistics* 2(2), 23-48.

Madiba, M. 2013. Multilingual education in South African Universities: Policies, pedagogy and practicality. *Linguistics and Education* 24, 385-395.

Martinez, R.A., Orellana, M.F., Pacheco, M. and Carbone, P. 2008. Found in translation: Connecting

translating experiences to academic writing. *Language Arts* 85(6), 421-431.

Mohanty, A.K. 2010. Languages, inequality and marginalisation: Implications of the double divide in Indian multilingualism. *International Journal of the Sociology of Language* 205, 131-154.

Mohanty, A.K. 2017. Multilingualism, education, English and development: Whose development? In H.Coleman (ed.), *Multilingualisms and Development*, 261-280. London: British Council.

Mohanty, A.K., Panda, M. and Pal, R. 2010. Language policy in education and classroom practices in India: Is the teacher a cog in the policy wheel? In K.Menken and O.Garcia (eds), *Negotiating Language Policies in Schools: Educators as Policy Makers*, 211-232. London: Routledge.

NKC (National Knowledge Commission). 2007. *National Knowledge Commission: Recommendations on School Education*. New Delhi: National Knowledge Commission. http://knowledgecommissionarchive.nic.in/downloads/documents/nkc_se.pdf

Orellana, M.F. and Garcia, O. 2014. Language brokering and translanguaging in school. *Language Arts* 91(5), 386-392.

Orellana, M.F. and Reynolds, J.F. 2008. Cultural modeling: Leveraging bilingual skills for school paraphrasing tasks. *Reading Research Quarterly* 43(1), 48-65.

Orellana, M.F., Lee, C. and Martinez, D.C. 2011. More than a hammer: Building linguistic toolkits. *Issues in Applied Linguistics* 18(2), 181-187. <http://escholarship.org/uc/item/7j6044vz#page-1>

Orellana, M.F., Martinez, D.C., Lee, C. and Montano, E. 2012. Language as a tool in diverse forms of learning. *Linguistics and Education* 23(4), 373-387.

Richards, J.C. and Schmidt, R. 2002. *Longman Dictionary of Language Teaching and Applied Linguistics*. Harlow: Longman.

Ruíz, R. 1984. Orientations in language planning. *NABE: The Journal for the National Association for Bilingual Education* 8(2), 15-34.

Sathuvalli, M. and Chimirala, U.M. 2013. Exploring L1 mediated lexical searches: Emerging evidence from beginner level collaborative writing. *The Journal for ESL Teachers and Learners* 2, 42-52. www.engquestinternational.com/pdf/Confluence-journal-2013.pdf

Setati, M., Adler, J, Reed, Y. and Bapoo, A. 2002. Incomplete journeys: Code-switching and other language practices in mathematics, science and English language classrooms in South Africa. *Language and Education* 16(2), 128-149.

TeachersBadi.in. 2015. GO.23 All AP KGBVs converted into AP KGBV English Medium Schools from 2015-16. www.teachersbadi.in/2015/04/go23-ap-kgbvs-schools-converted-apkgbv-english-medium-schools-from2015-16.html

Vertovec, S. 2007. Super-diversity and its implications. *Ethnic and Racial Studies* 30(6), 1024-1054.

Foreword by
Justice A K Sikri

13 *Law, Judiciary
and Governance*

A Festschrift in Honour of
Professor (Dr.) Mool Chand Sharma

Universal
Law Publishing

an imprint of LexisNexis



VIJENDER KUMAR
NARESH KUMAR VATS
VIJAY PRATAP TIWARI

Table of Contents

<i>Foreword</i>	vii
<i>Preface</i>	xix
1. The Judiciary and Governance: Progressive Outreach of the Supreme Court in Recent Years	1
2. Directive Principles of State Policy: Their Relevance in Contemporary Constitutional Jurisprudence	13
3. Judiciary and Governance: A Balancing Act	40
4. Law, Legal Education and a Law Teacher	54
5. Mimamsa Rules of Interpretation as Applied to Hindu Law: Time for Judicial Introspection	56
6. A Critical Overview of Selection Methods in Higher Judiciary	84
7. Supreme Court of India on Governance	98
8. Judiciary and Good Governance: The Recent Trends in India	127
9. Indian Judiciary at the Crossroads: Constitutionalism, Democracy and Constitution	145
10. Judicial Supremacy with Special Reference to <i>I.R. Coelho v. State of Tamil Nadu</i> and Its Impact on Interpretation of Ninth Schedule of the Constitution	152
11. Higher Judicial Appointments and Related Constitutional Virtues	166
12. A Comparative Analysis of the Judicial Treatment of "The Public Policy Exception" for Refusal to Recognise Foreign Arbitral Awards	182
13. A Data-Driven and Systemic Approach to Judicial Reforms	194

14. Constitutional Validity of Parliamentary Secretaries in the Indian Context	206
15. Nature of "Article 370 of the Constitution of India" and Consequent Presidential Orders: A Contemporary Analysis	214
16. Judicial Governance in Delayed Execution of Death	227
17. Revisit to the Constitutionality of Capital Punishment	235
18. "Juris Equality"—Concerns for the Riddance of Layered Gender Justice: An Alternative Perspective	248
19. Governing Educational Globalisation in India: Law, Justice and Equity	258
20. Online Obscenity and the Judicial Dilemma	270
21. Right to Health in India: An Analysis of Constitutional, Human Rights and IPR Provisions	291
22. Freedom of Speech and Expression and Copyright Law	306
23. Development Causing Flood Disaster in Cities: Delineating Acts of Commission and Omission by Government	315
24. Environmental Rights of Marginalised in the Narmada Valley Dam Project in India	329
25. Uniform Civil Code: A Delayed Agenda	343
26. Judging the "Ideal Family"	362
27. Political Participation of Women and Its Role in Good Governance: A Study of the Indian Discourse	371
28. China's New Strategy in Tibet and India-China Relations: Why Did China Come Out with White Paper?	389
29. Parliamentary and Presidential Form of Governance	400
30. New Education Policy in a Co-operative Federalism: Compulsions of State Centric Policies in Social Sector	414
31. Rule of Law, Democracy and Human Rights—Recent Judicial Approach	421
32. Constitutional Governance and Role of the Supreme Court of India with Special Reference to Article 356 of the Constitution of India	430
Subject Index	439

Online Obscenity and the Judicial Dilemma

K.V.K. Santhy*

Professor (Dr.) Mool Chand Sharma is a well-known legal architect, visionary and mentor to many budding lawyers, judges and scholars. I came to know about the proposed book titled Law, Judiciary and Governance: A Festschrift in the Honour of Professor (Dr.) Mool Chand Sharma through Professor (Dr.) Vijender Kumar, Vice-Chancellor, Maharashtra National Law University, Nagpur. I decided to dedicate one of my best research paper in Festschrift in the Honour of Professor (Dr.) Mool Chand Sharma. I am thankful to Professor Kumar for encouraging me and considering my contribution for the noble book.

Keywords: Online, Obscenity, Pornography, Oppression, Women, Sexual, Subordination, Cyberspace, Jurisdiction, Child.

Introduction

As per the survey conducted by Delhi police, free availability of porn movies, on internet and otherwise, as well as sale of illicit liquor have contributed to the recent rise in sexual crimes against women. It seems in an incident which occurred in Delhi after watching a porn film, a 22-year-old man lured a five-year-old child with chocolates and brutally raped her. This alleged shocking confession of the Delhi rapist raises an uncomfortable question¹—Is easy accessibility to porn responsible for the rise in sexual crimes in India?

Some psychiatrists believe that absence of fear of law is the cause “One cannot connect rape with porn; otherwise we would be seeing rapes on every street. Rape is one of the symptoms of social chaos. People believe nobody gets caught or punished.”²

Responding to a petition seeking a ban on pornographic websites, a three-judge bench of the apex court headed by Chief Justice HL Dattu had remarked:

Such interim orders cannot be passed by this court. Somebody can come to the court and say ‘Look, I am an adult and how can you stop me from watching it within the four walls of my room? It is a violation of Article 21 (right to personal liberty) of

* Assistant professor of criminal law in the Nalsar University of Law, Hyderabad, Telangana.

1 Rashmi Rajput. Sex crimes related to watching pornography. Available at <http://www.ndtv.com/india-news/sex-crimes-related-to-watching-pornography-520129> (accessed on 10 October 2016).

2 *Ibid.*

KSN MURTHY'S
CRIMINAL
LAW
Indian Penal Code



THIRU

Dr. B. L. S. S. S.

LOXISNEXIS

16

[Home](#) > [Knowledge](#) > [Epistemology](#) > [Philosophy](#) > [Knowledge Sharing](#)

Chapter

Knowledge Sharing Cultural Dimensions from Team and Organization Perspective

February 2017

DOI: 10.4018/978-1-5225-1913-3.ch044

In book: Organizational Culture and Behavior: Concepts, Methodologies, Tools, and Applications

Authors:

**Satyendra C Pandey**

Institute of Rural Management Anand

[Request full-text](#)[Download citation](#)[Copy link](#)

To read the full-text of this research, you can request a copy directly from the author.

References (84)

Abstract

Process view of Knowledge Management (KM) suggests that KM can be broken down into a series of processes commonly labeled as knowledge creation, storage, sharing and application. Out of these, KM literature identifies knowledge sharing as most important and complex. Literature also suggests that knowledge sharing and culture is not studied under both the perspective of a team and organization. Other important success factors for KM are IT infrastructure and organizational structure. IT is important in how knowledge travels and is accessed in the organization. Structure acts both as a bridge and a barrier in KM process. Of all the factors identified, culture remains the most understudied and complex. This chapter seeks to investigate and set a precursor to study the relationship between cultural dimensions which are not very well defined, yet important in knowledge sharing behavior. Dimensions of culture which are found to be important are trust and cooperation. Chapter also highlights the need of studying this from team as well as organization perspective.

Discover the world's research

- 20+ million members
 - 135+ million publications
 - 700k+ projects
- [Join for free](#)

No full-text available

17

Chapter

Select Tenets of Space Law as Jus Cogen

October 2017

DOI: 10.1007/978-981-10-4926-2_2

In book: Recent Developments in Space Law (pp.7-26)

Authors:



G. S. Sachdeva

Request full-text

Download citation

Copy link



To read the full-text of this research, you can request a copy directly from the author.

Citations (6)

Abstract

Space Law is deemed to be a branch of International Law and follows the dictum of pacta sunt servanda. This implies that specialibus treaties and conventions operate between "signatories and ratifiers". It thus becomes a moot question whether the Space Law is applicable to other states and equally obligatory on them or that defiance is conceivable, maybe to facilitate the cause of non-state actors. This apprehension magnifies because except for Outer Space Treaty, ratifications for other conventions and agreements are rather limited. Thus, the sweep of Space Law is not global despite UN initiatives and Resolutions. There is however limited consensus that Outer Space Treaty, because of its wide acceptance, can be treated as Customary Law of Outer Space. Because its obligatory ambit is wide enough to be effective on space-faring states though not universal enough to cover all states, present and future. This needs judicious advocacy by space scholars to propagate OST as customary norms. By itself, Outer Space Treaty is one of the finest international instruments embodying new jurisprudence (non-appropriation principle, access to space for all states, even non-members), some principles of jus naturale (Common Heritage of Mankind and Sharing of Scientific Information and International Cooperation) and some established tenets of International Law (state responsibility and liability concept). International Law has its jus cogens as peremptory norms binding on all states. It seems desirable to select and evolve some precepts of OST as Jus Cogens of Space Law. These need no declaration or acceptance by any sovereign authority yet tend to become binding as supra-law. To attain this status, the selected principles need to be "lobby-ed" for opinion juris of Space

Discover the world's research

- 20+ million members
- 135+ million publications
- 700k+ projects

Join for free

Disability in South Asia

Knowledge & Experience

Edited by
Anita Ghai



Contents

Foreword by Shyam Menon

Acknowledgements

Introduction: Epistemological and Academic Concerns of Disability in the Global South by Anita Ghai

Part I: Historical and Theoretical Perspectives on Disability Studies

- Chapter 1 Disability Rights Law and Origin of Disability Rights Movement in India: Contesting Views by Jagdish Chander
- Chapter 2 Emergence of Disability Rights Movement in India: From Charity to Self-advocacy by Meenu Bhambhani
- Chapter 3 Refocusing and the Paradigm Shift: From Disability to Studies in Ableism by Fiona Kumari Campbell
- Chapter 4 Disability within Rawlsian Framework of Justice: Challenging the Injustice Rationale by Deepa Palaniappan and Valerian Rodrigues
- Chapter 5 Disability Studies as Resistance: The Politics of Estrangement by Tanmoy Bhattacharya

Part 2: Disability, Body, Care and Sexuality

- Chapter 6 Experiencing the Body: Femininity, Sexuality and Disabled Women in India by Nandini Ghosh
- Chapter 7 Emergence of Epistemological Questions of Crip Queer across Shifting Geo/Bio-political Terrain by Janet Price and Niluka Gunawardena
- Chapter 8 Ethics and Practice of Care: A Focus on Disability by Upali Chakravarti

Part 3: Knowing the Self and Writing Life

- Chapter 9 Privilege or Marginalization: Narrative of a Disability Rights Activist by Nidhi Goyal
- Chapter 10 Journey So Far: My Life with an Impairment by Sameer Chaturvedi
- Chapter 11 Narratives of Growing with A-typicality by Asha Singh
- Chapter 12 Life-writing and Disabled Self in the Works of Oliver W. Sacks by Sandeep R. Singh
- Chapter 13 Blind Culture and Cosmologies: Notes from Ved Mehta's Continent of India by Hemachandran Karah

Part 4: Disability in Literature and Culture

- Chapter 14 Disability across Cultures by Shubhangi Vaidya
- Chapter 15 Corporeality and Cultural Difference by Shilpaa Anand

Chapter 16 Interrogating Normalcy, Decolonizing Disability: Corporeal Difference in the Post-colonial Indian English Novel by Someshwar Sati

Chapter 17 Jataka Katha Goes On: Materiality as Metaphor by Santosh Kumar

Part 5: Disability, Family Epistemologies and Resistance to Shame within the Indian Context

Chapter 18 Disability, Family Epistemologies and Resistance to Shame within the Indian Context by Shridevi Rao

Chapter 19 Inclusive Education in India: Concept, Practice and the Way Forward by Ankur Madan

Chapter 20 The Emancipatory Potential of a Structural Understanding of Disability: A Response to Linda Ware by Suchaita Tenneti

Chapter 21 Disability at Work? Media Representations, CSR and Diversity by Arun Kumar and Nivedita Kothiyal

Part 6: Legal Discourses of Disability in India

✓ Chapter 22 A Disability Studies Reading of the Law for Persons with Disabilities in India by Amita Dhanda

Chapter 23 Reimagining Kinship in Disability-specific Domesticity: Legal Understanding of Care and Companionship by Rukmini Sen

Part 7: Constructing Disability as Diversity

Chapter 24 Disability as Diversity: An Alternative Perspective by Shanti Auluck

Chapter 25 Unification of Disability in Diversity: A Different Voice by Anita Ghai

About the Editor and Contributors

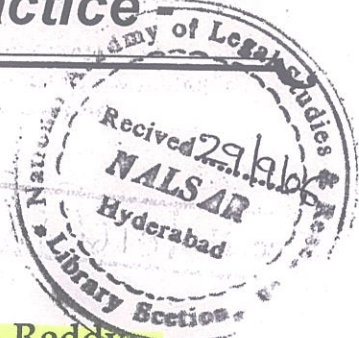
Index

19

Acc. No : 01666848

8

MUNICIPAL SOLID WASTE - Law and Practice



By :

Dr. K. Vidyullatha Reddy

B.Com., LL.M., Ph.D.

Assistant Professor

NALSAR University of Law, Hyderabad.

S. Gogia & Company



Opp. High Court
Hyderabad - 50
(Andhra Pradesh)
Phone: 2456 576



NALSAR
University of Law



CONTRIBUTORS

-B, 1st Floor,
al Complex,
ad - 500 001.
0, 2323 0747
0 - 2323 0747

MUNICIPAL SOLID WASTE

- Law and Practice -

<i>Preface</i>	<i>i - ii</i>
<i>Table of cases</i>	<i>iii - v</i>
<i>List of Abbreviations</i>	<i>vi</i>
<i>Table of Statutes</i>	<i>vii</i>

Introduction	1
--------------------	---

Part - I

HISTORY, DEVELOPMENT AND EMERGENCE OF STATUTORY INSTRUMENTS RELATING TO MUNICIPAL SOLID WASTE MANAGEMENT IN INDIA

Pre enactment process	18
-----------------------------	----

Part - II

LEGAL REGULATION IN INDIA

Extent and scope of Municipal Solid Wastes (Management and Handling) Rules	22
Responsibilities and Authorities	23
Monitoring	28
Reporting	29

Critical Analysis of Municipal Solid Wastes (Management and Handling) Rules	30
Remedies under Common Law and Public Law	32

Part - III

**LAW AND PRACTICE OF MUNICIPAL
SOLID WASTE MANAGEMENT**

Introduction to Waste Management and Hyderabad practice	42
Segregation of waste	50
Collection of waste	63
Storage of waste	72
Transportation of waste	78
Disposal of waste	84
Private Operators and Public Participation	103
Notes on improvement of Waste Management	110

Part - IV

**COMPARATIVE STUDY OF
INDIA AND UNITED KINGDOM**

Regulation of Municipal Solid Waste in India and United Kingdom	113
Practice in Cardiff	119

Part - V

ATTITUDINAL SHIFT

Introduction	122
Necessity to consider environmental violations as environmental crimes	124

Table of Contents

Legislative status of environmental violations in India	132
Law Commission of India Report	149
Draft National Environmental Policy - 2004 - India	152
Notes and Questions	153

APPENDICES

Appendix – I

Environment (Protection) Act, 1986	155
--	-----

Appendix – II

Municipal Solid Wastes (Management and Handling) Rules, 2000	173
---	-----



20

Halsbury's LAWS OF INDIA

Second Edition

32

DIRECT TAX-II



LexisNexis®

Editorial Advisory Board

Justice M N Venkatachaliah
Padma Vibhushan,
Former Chief Justice of India,
Former Chairman, National Human Rights Commission

Justice K T Thomas
Padma Bhushan,
Former Judge, Supreme Court of India

Justice C K Thakker
Former Judge, Supreme Court of India

Professor N R Madhava Menon
International Bar Association Chair Professor in Continuing
Legal Education, National Law School, Bangalore,
Former Director, National Judicial Academy, Bhopal, and
National Law School University of India, Bangalore
Former Vice-Chancellor, National University of
Juridical Sciences, Calcutta

Professor Dr M P Singh
Former Chairperson, Delhi Judicial Academy,
Former Vice Chancellor, National University
of Juridical Sciences, Calcutta

Shri Fali S Nariman
Padma Vibhushan,
Senior Advocate, Supreme Court of India

Shri Soli Sorabjee
Padma Vibhushan,
Former Attorney General for India,
Senior Advocate, Supreme Court of India

Shri Samaraditya Pal
Senior Advocate, Calcutta High Court, Barrister (Inner Temple)

Dr Rajeev Dhavan
Senior Advocate, Supreme Court of India,
Member, Executive Committee, International Commission of Jurists

Shri Arvind P Datar
Senior Advocate, Madras High Court

Ms Flavia Agnes
Advocate, Bombay High Court,
Founder-Director, Majlis - A Centre for Rights Discourse
and Inter-disciplinary Arts Initiative

The title **DIRECT TAX-II** in Volume 32
has been contributed by:

NEHA PATHAKJI

*Assistant Professor,
NALSAR University of Law, Hyderabad*

TABLE OF CONTENTS

Table of Contents.....	ix
Table of Contents and Abbreviations.....	xvii
Table of Contents for Law Reports.....	xix
Table of Statutes.....	xxv
Table of Subsidiary Legislation.....	ccxxiii
Table of Cases.....	ccxxvii
Table of Legislation.....	ccxxvii
Table of Legislation.....	887

The law stated in this volume is in general that came in force on 23 June 2008, although subsequent changes have been incorporated wherever possible as per current amendments.

Corporations and Disability Rights

Bridging the Digital Divide

NEHA PATHAKJI

With Gratitude

To my 'alma mater'

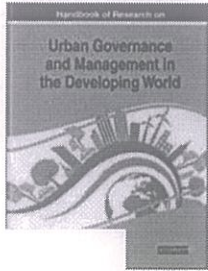
N. A. Pathakji
28/8/18

OXFORD
UNIVERSITY PRESS

293/15/2011

Contents

<i>List of Figures</i>	vii
<i>Table of Cases</i>	ix
<i>Table of Statutes</i>	xi
<i>Foreword by Amita Dhanda</i>	xiii
<i>Preface</i>	xxi
<i>List of Abbreviations</i>	xxv
Introduction	1
1. Embedding the Right to Access the Internet in Human Rights Framework	43
2. Re-conceptualizing the Corporate Human Rights Obligation	80
3. Corporations and the Goldilocks Dilemma of International Human Rights Laws	120
4. Mandating the Midas Touch: Anti- discrimination Laws and Corporations	154
5. The Interconnected Pentagon Model: From Commitment to Compliance	217
Conclusion	281
<i>Bibliography</i>	297
<i>Index</i>	323
<i>About the Author</i>	333



22

Handbook of Research on Urban Governance and Management in the Developing World

Joshua Mugambwa (Makerere University, Uganda) and Mesharch W. Katusiimeh (Makerere University, Uganda)

Indexed In: SCOPUS

Release Date: May, 2018

Copyright: © 2018

Pages: 491

DOI: 10.4018/978-1-5225-4165-3

ISBN13: 9781522541653

ISBN10: 1522541659

EISBN13: 978152254

Chapter 12

- Rural Urban Youth Delinquency in Zimbabwe, the Nexus: Youth Delinquency 207
Obediah Dodo, Bindura University, Zimbabwe
Christine Mwale, Bindura University, Zimbabwe

Section 8 **Urban Development**

Chapter 13

- Spatiality, Clustering, and the Agglomeration Economies of Scale: A Spatial Statistical Approach to Informal Manufacturing in Harare, Zimbabwe 224
Simbarashe Show Mazongonda, University of Zimbabwe, Zimbabwe
Innocent Chirisa, University of Zimbabwe, Zimbabwe

Chapter 14

- Levels of Social Disparity in a Shrinking Setting: A Case of Shrinking Cities of Khuzestan Province, Iran 248
Amir Reza Khavarian-Garmsir, University of Tehran, Iran
Ahmad Pourahmad, University of Tehran, Iran
Hossein Hataminejad, University of Tehran, Iran
Rahmatollah Farhoodi, University of Tehran, Iran

Section 9 **Culture and Development in the City**

Chapter 15

- Responsible Practices of Stakeholders for Sustained Tourism Destination Development 264
Deepti Jog, Goa Institute of Management, India

Section 10 **Transport and Urban Development**

Chapter 16

- Transportation and Urban Development: Urban Growth and Spillover Effect of Transportation Infrastructure Investment 283
Mehmet Akif Kara, Kahramanmaraş Sutcu Imam University, Turkey

Chapter 17

- Effectiveness of KCCA in the Traffic Management and Solid Waste Management Sectors in Kampala: The Informal Sector and the City Economy 306
Phillips Odwokacen, Uganda Christian University, Uganda
Mesarch W. Katusiimeh, Ankole West University, Uganda

Defining the Frontiers of Global Business Research Across Emerging Countries



MONOGRAPH BOOK

Defining the Frontiers of Global Business Research
Across Emerging Countries



Editor
Prof. Dr. Zafar U. Ahmed

Co-Editors
Prof. Dr. Mohd Shukri Ab Yajid
Dr. Sahil Raj
Prof. Dr. Ali Khatibi

Mc
Graw
Hill
Education

Mc
Graw
Hill
Education

DEFINING THE FRONTIERS OF GLOBAL BUSINESS RESEARCH ACROSS EMERGING COUNTRIES

Edited by

Zafar U. Ahmed

*BBA (New York), MBA (Texas), Ph.D., (Utah),
Professor of Marketing and International Business
Department of Marketing
School of Business
American University of Ras Al Khaimah
Ras Al Khaimah
United Arab Emirates*

and

President and CEO

*Academy for Global Business Advancement
(www.agba.us)
Blacksburg, Virginia,
USA*

Mohd Shukri Ab Yajid

*President and Founder
Management and Science University
Malaysia*

Sahil Raj

*AGBA Vice President for Global Publications
Assistant Professor of Management Information Systems
School of Management Studies
Punjabi University
Patiala, State of Punjab,
India*

Ali Khatibi

*Professor of Digital Marketing
Senior Vice President of Post Graduate Centre
Dean: Graduate School of Management
Management and Science University
Malaysia*



McGraw Hill Education (India) Private Limited

CHENNAI

McGraw Hill Education Offices

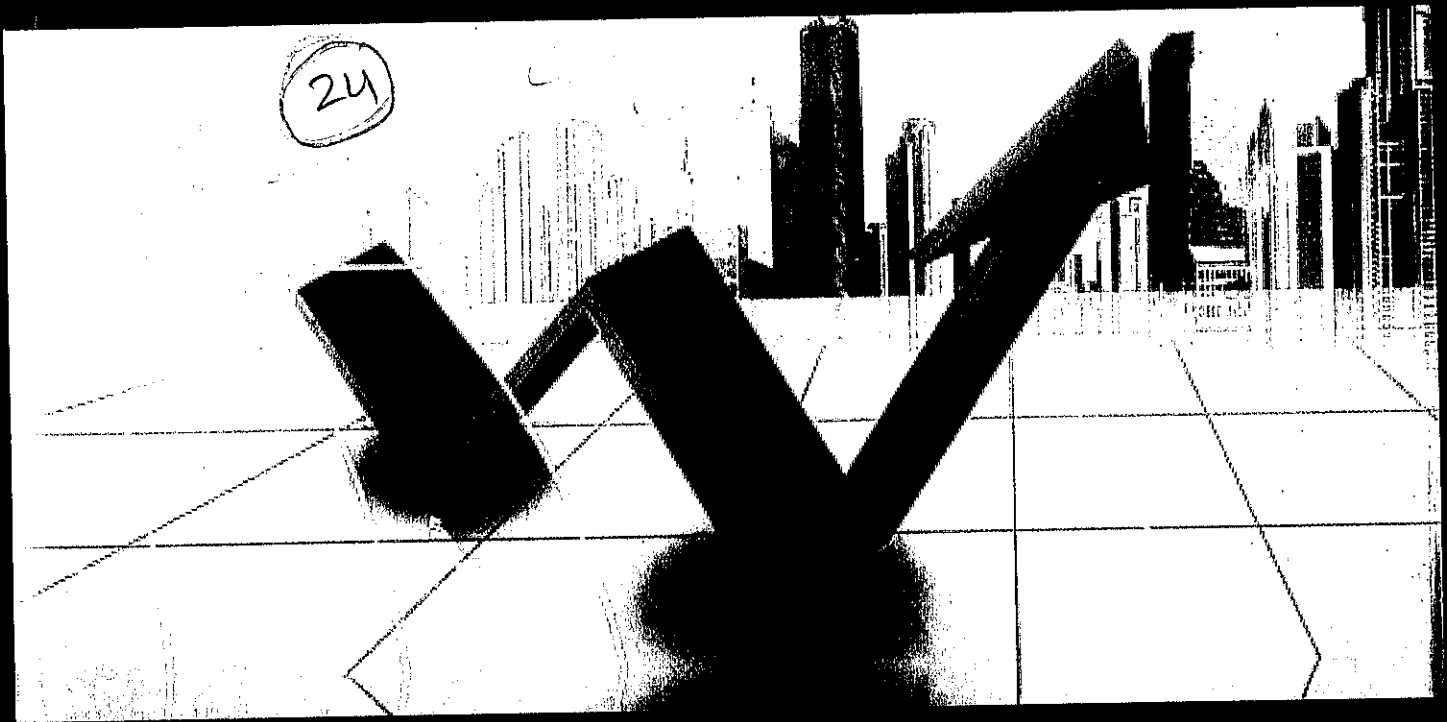
Chennai New York St Louis San Francisco Auckland Bogotá Caracas
Kuala Lumpur Lisbon London Madrid Mexico City Milan Montreal
San Juan Santiago Singapore Sydney Tokyo Toronto

Contents

Sr No.	Title	Page No.
	<i>Introduction</i>	<i>iii</i>
	<i>Sponsors</i>	<i>iv</i>
	<i>Review Board</i>	<i>v</i>
	<i>Preface</i>	<i>ix</i>
	<i>Biopic of Editors</i>	<i>xi</i>
1.	Earnings Management Practices in Commercial Banks Listed at the Colombo Stock Exchange: Evidence from Sri Lanka <i>Anothonige Anil Jayantha Fernando</i>	1
2.	Continuous Improvement: A Comparison between Islamic and Conventional Approaches <i>Afroza Bulbul Afrin and Rafikul Islam</i>	13
3.	Adoption of E-Learning in Tourism and Hospitality Training in Kenyatta and MOI Universities <i>Bernard Gichana Ombati, Noah Wasilwa Sitati and Bobby Ernest Lisamula Wishitemi</i>	26
4.	Impact of Relationship Marketing Practices on Customer Loyalty: A Case Study of Awash Bank Dire Dawa, Ethiopia <i>Bhavan Narayana Kandala and Kameswara Rao Poranki</i>	48
5.	Linking Employee Engagement with Knowledge Creation <i>Caroline Sitienei Koech</i>	69
6.	Emotional Experience, Store Image, Social Value and Purchase Intention: A Moderated Mediation Analysis in a Retail Setting <i>Clement Gichunge Nkaabu, Ronald Bonuke and Ernest Saina</i>	90
7.	Effect of User Perception on the Relationship Between Organizational Context and Adoption of Cloud Computing: Evidence From SMEs in Nairobi County, Kenya <i>Emily Mworio Chemjor, Charles Lagat and Ronald Bonuke</i>	112
8.	Green Consumer Behaviour, Culture and Sustainability of Manufacturing Firms in Kenya <i>Emmanuel K. Tanui and Evaline J. Bartocho</i>	133
9.	Financial Literacy, Financial Attitude and Saving Behaviour of Youth in Uganda: A Case of Mbarara District <i>Ester Agasha, Martin Bakunda and Lucy Jepchoge Rono</i>	155
10.	The Entry Mode Contract Negotiation and Formation Process in Emerging Market Environments <i>George White</i>	175
11.	Factors Affecting the Farmers' Decision Towards Contract Farming: An Empirical Study of Indian Punjab <i>Harpreet Singh and Inderjeet Singh</i>	194

Sr No.	Title	Page No.
12.	CEO Cooperation, Charismatic Leadership and Performance of Small and Medium Size Enterprises in Western Kenya <i>Hesbon Nangabo Otinga, Osieko Matti Omar, Loice Chepng'etich Maru and Moses Ng'on'ga</i>	209
13.	The Impact of Attendees' Event Association on Sponsor Brand Image: A Case of Indian Premier League <i>Jaskirat Singh and Apar Singh</i>	234
14.	Media and Education: Domestic Tourists' Perspective <i>Kezia Herman Mkwizu, Rogers Matama and Caroline Atuzarirwe</i>	257
15.	The Pecking Order of Financing and the Effect of Free Cash Flow on Implied Over – Investment of Publicly Traded Firms in Kenya <i>Kimutai Torois, Josephat Cheboi and Daniel Kirui</i>	276
16.	An Intellectual Journey into the Historical Evolution of Marketing Research in Services Marketing for Libraries <i>Kaththota Ralalage Niluka Harshani, Zafar U. Ahmed and Ali Khatibi</i>	307
17.	An Exploration of Global Five Star Hotel Branding with a Sri Lankan Perspective <i>Kumudinie Champa Liyasilinie Iddamalgoda, Zafar U. Ahmed and Ali Khatibi</i>	328
18.	Building Corporate Image through Corporate Social Responsibility: Mediated by Stakeholders' Attitude (CSR Activities in Indonesian State-Owned Enterprises) <i>Mahrinasari MS</i>	347
19.	Examining the Twin Deficit Hypothesis: Evidence from Nigeria (1986-2015) <i>Mustapha Hussaini, Garba Ibrahim Sheka</i>	367
20.	Technology Switching or Brand Switching: Which Phenomenon Reflects Switching Behavior Associated with Technological Products? <i>Osama Sam AL-KWIFI</i>	387
21.	Developing an Understanding of Consumerism: A Macro-Level View <i>Othman Mohammed Althawadi, John Fraedrich and Allam Abu Farha</i>	403
22.	Choice between Personal Life and Education and Career: An Inquiry Into the Question of Domestic Duty vs. Self Interest of Learning and Career based from Female Postgraduate Students of Asian Institute of Technology, Thailand <i>Prakaydao Krissadee</i>	423
23.	Our Nature, Our Planet, Our Resource-Blockchains: The Sustainable Differentiation Research <i>Salil Kumar Sen, Viput Oongsakul and Chamlong Poboorn</i>	440
24.	Charismatic Leadership, Achievement Culture and Job Satisfaction: Testing for Mediation <i>Samuel Kipkoech Marigat and Daniel Kipkirong Tarus</i>	452
25.	In What Manner Elasticity of the Resources Help in Leveraging the Strategic Resources—A Case Study of the Hotels of India <i>Sanjay Dhir and Swati Dhir</i>	469

Sr No.	Title	Page No.
26.	An Intellectual Journey into the Historical Evolution of Marketing Research in Global Luxury Branding <i>Sattambi Sumith de Silva, Zafar U. Ahmed and Ali Khatibi</i>	497
27.	Predictive Analytics in Human Resources – Applying Artificial Neural Networks to Predict 'Who' Quits and 'Who' Stays in Indian IT Firms <i>Shivinder Nijjer, Sahil Raj and Tanveer Kajla</i>	521
28.	A Theoretical Investigation of the Relation between HRM Practices and Firm Performance <i>Sorasak Tang Thong and Sahil Raj</i>	556
29.	Conceptualising Parental Behavior Influence in Provision of Food to Children <i>Yoke Kiau Leong, Sanjaya Singh Gaur and Brian C. Imrie</i>	586
30.	Knowledge Management Infrastructure Capability Effects on Higher Educational Institutions' Performance and the Moderating Role of Religiosity: The Case of Malaysia <i>Zainal Abidin Mohamed and Muhammad Hafiz Yaakub</i>	602



Development and Prospectus of Business Management

Amit Prasad | Lalit Kumar Pant

B

Interplay Between Corporate Governance and Corporate Social Responsibility

G. Mallikarjuni*

ABSTRACT

The Corporate Governance (CG), in today's scenario, tries to make balance between economic and social goals. Consequently, behaving socially responsible would increase the human development of stakeholders both within and outside the corporation. Corporate Governance strives for maximization of the profits so as to protect the shareholders interest who have provided capital to firm, while Corporate Social Responsibility (CSR) apparently against the profit maximization because it suggested a set of actions beneficial for external stakeholders that may not be good for a shareholder. However, presently CSR is gradually getting fused into the Corporate Governance practices of the company because of the mandatory concept evolved by new Companies Act. Further, it may be noted that the Corporate Governance and CSR are two related and interlinked business concepts that are deeply embedded in the business practices. Thus, CG and CSR are strong compliments to each other. In this context, an attempt is made to discuss the concept of CSR and Corporate Governance, and their interrelationship, within legal and regulatory framework in India.

Keywords: Corporate Governance, Corporate Social Responsibility, Shareholders and Stake holders

Introduction

Corporate Governance is the whole set of legal, cultural, and institutional arrangements that determine what publicly traded corporations can do, who controls them, how that control is exercised, and how the activities they undertake are allocated (Sharpe, M. E. (1996)). In other words, Corporate Social Responsibility (CSR) evolved actually from charity towards individuals or towards society. It is also concerned with treating the stakeholders in a responsible manner. Though the Corporate Governance concentrates on the profit making of the company, it is also concerned with trying to make balance between economic and social goals. Consequently, behaving socially responsible will increase the human development of stakeholders both within and outside the corporation. Corporate Governance strives for maximize the profits so as to protect the shareholders interest who have provided capital to firm, while CSR apparently was against the profit maximization because it suggested a set of actions beneficial for external stakeholders that may not be good for a shareholder. However, CSR is gradually getting fused into the corporate governance practices of the company. This convergence paves the way for Corporate Governance to adapt prevailing norms and the need for accountability, and it enables CSR to adapt prevailing norms and the need for accountability. It may be noted that the Corporate Governance and CSR are two related and interlinked business concepts that are deeply embedded in business practices. In this context, an attempt is made

*Assistant Professor of Law, NALSAR University of Law, Hyderabad, Telangana.

to discuss the concept of CSR and Corporate Governance, and their interrelationship, cultural, legal and regulatory framework in India.

Review of Literature

Halder, K. (2015) in his research work explicated that the corporate governance framework is there to encourage the efficient use of resources and equally to require accountability for the stewardship of those resources. In other hand corporate social responsibility (CSR) is a business approach that contributes to sustainable development by delivering economic, social and environmental benefits for all stakeholders. The merger of both can be seen and they are inter-related.

Mullerat, R, and Daniel Brennan(2011), in their book they categorically observed that the corporate Governance is an umbrella term and CSR is gradually getting fused into the company's corporate governance practices. Their relationship can be interpreted by abandoning the standard view of the firm as a shareholder value maximizer and embracing the view of a firm as a stakeholder value maximizer. This convergence paves the way for Corporate Governance to be driven by ethical norms and the need for accountability, and it enables CSR to adapt prevailing business practices.

Swati, K. (2014), argues that CSR has become an integral part of the corporate strategy and companies have to be more transparent in their business activities and have to incorporate the social responsibility schemes which they have implemented are directed to be mentioned in their annual report. The challenges here are considerable, including the integration of CG measures for CSR across MNCs whose business units operate under very different CG systems and particularly for SMEs in emerging and developing countries which have underdeveloped CG system to start with.

Research Methodology

A doctrinal study has been adopted by the researcher in the completion of the research work where in the material and the data which had been gathered from the various secondary sources like books, articles, concept papers, Journals, Periodicals, and websites on Corporate Governance and Corporate Social Responsibility was critically evaluated and analyzed to write the paper.

The Concept of Corporate Governance

Corporate governance may be defined as the broad range of policies and ethical practices which are adopted by an organisation in its dealing with the stakeholders. According to The Organisation for Economic Co-operation and Development (OECD), the Corporate Governance structure specifies the distribution of rights and responsibilities among different participants in the corporation, such as, the Board, managers, shareholders and other stakeholders spells out the rules and procedures for making decisions on corporate affairs (Verma DP & Kumar R., 2012).

Conceptually, Corporate Governance is the system of rules, practices and processes by which a company is directed and controlled. Corporate governance essentially involves balancing the interests of a company's many stakeholders, such as shareholders, management, customers, suppliers, financiers, government and the community. Corporate governance is concerned with holding the balance between economic and social goals and between individual and communal goals. The corporate governance framework is there to encourage the efficient use of resources and equally to require accountability for the stewardship of those resources. It has to make sure that an organization is running in a responsible manner by guaranteeing accountability, transparency and compliance with existing laws and rules and thereby protect the interest of the shareholders in particular and stakeholders in general. It is the whole set of legal, cultural, and institutional arrangements that determine what publicly traded corporations can do, who controls them, how that control is exercised, and how the risks and returns from the activities they undertake are allocated (Sharpe, M. E., 1996).

Corporate Governance: The Indian Scenario

Corporate Governance is a system which set up certain principles and guidelines by which a company is governed. The guidelines provided ensure that the company is directed and controlled in a way

so as to achieve the goals and objectives to add value to the company which in turn benefit the stakeholders in general and shareholders in particular. Good Corporate Governance (Principles of Good Corporate Governance have been incorporated to have Transparency, Accountability and Responsibility on directors) is essential for the growth, profitability and stability of any business. The Company Act, 2013 introduced some progressive and transparent methods which would increase the involvement of the shareholders in decision making and introduced the transparency in corporate governance, which ultimately safeguards the interest of the society (Ritchie, J. M., 2015).

In India, the concept of Corporate Governance has been strengthened through the board and board processes under the present Companies Act, 2013 which indirectly has emphasized on Corporate Social Responsibility through its following provisions (Vaish Associates, 2017):

- Every company is required to appoint 1 (one) resident director on its board.
- Nominee directors shall no longer be treated as independent directors.
- Listed companies and specified classes of public companies are required to appoint independent directors and women directors on their boards.
- The Companies Act for the first time codifies the duties of directors.
- Listed companies and certain other public companies shall be required to appoint at least 1 (one) woman director on its board.
- New Companies Act mandates following committees to be constituted by the board for prescribed class of companies which include Corporate social responsibility committee along with a) Audit committee, b) Nomination and remuneration committee and c) Stakeholders relationship committee

The new companies Act, which was enacted on August 30, 2013 and the subsequent amendments by Securities and exchange Board of India to Clauses 35B and 49 of the Equity Listing agreement (Amendment, 2014) placed the duty on Board of Directors to monitor the social activities of the Indian companies so as to compliance with regarding mandatory spending of the amount for social activities in the annual report and report to the stock exchange signed by the compliance officer to disclose compliance with non-mandatory requirements in annual reports under clause 49 (Halder, K., 2015).

Corporate social responsibility (CSR): The Concept

Corporate Social Responsibility (CSR) is an initiative to improve corporate operations in relation to a range of values beyond profit, namely, human rights, environmental protection, contribution to local communities, and promotion of labour rights etc. It implies that companies voluntarily integrate with social and environmental concerns in their operation and interact with stake holders. It is nothing but responsibility of the corporate towards society in which they operate their business and therefore the importance of CSR should be propagated by conducting the campaigns so as to create awareness among corporate, civic, and government bodies

Under the Corporate Social Responsibility, the company or organization or firm has the responsibility to promote social development. CSR is a business approach that contributes to sustainable development by delivering economic, social and environmental benefits for all stakeholders. CSR is a concept with many definitions and practices. Corporate Social Responsibility (CSR) is corporate form of self-regulation integrated into the business model to create a positive impact on the stakeholders and the environment. CSR is a concept, as per European Commission, whereby companies integrate social and environmental concerns in their business operations and in their interactions with their stakeholders on a voluntary basis (Haerens, M., & Zott, L. M., 2014).

Corporate social responsibility (CSR): Indian Scenario

In India, prior to the new Companies Act 2013, both the public and private companies were taking up certain philanthropic activities on a voluntary basis. Such programs were mainly focused on religion and to a limited extent on educational activities (G. H., & A. S. (n.d.)). Up to 2009, there were no specific guidelines for CSR in the country. It was only in 2009 that the Ministry of Corporate Affairs

issued certain guidelines for the companies to undertake CSR activities on voluntary basis. The Ministry, however, issued fresh guidelines for the central public sector enterprises (CPSEs) in 2013 according to which the budgetary allocation to CSR was linked to their Profit After Tax (PAT) of the previous year. Now with the enactment of the Companies Act 2013, the public as well as private sector companies with a net worth of Rs 500 crore, turnover of over Rs 1,000 crore, or net profit of more than Rs 5 crore, are required to spend at least 2 per cent of the average net profit in the three immediately preceding years on CSR activity (The Ministry of Corporate Affairs MCA and its notification, 2014). Although spending is mandatory, companies will only have to report how much they spent and explain why they could not meet the commitment. Another main provision under the new Act is that Companies will have to set up a Corporate Social Responsibility (CSR) committee at the board level that must be headed by an independent director on the board. The committee will frame a CSR policy for the company or group and recommend expenditure on various projects. It will also monitor the CSR policy of the company from time to time. The company will have to provide information on their CSR policy and the attendant spending on the website and in the directors' report, putting all the relevant information in the public domain that can be accessed by the company's shareholders, media and social activists (Section 135 of Companies Act, 2013). Thus the Act encourages companies to spend at least 2% of their average net profit in the previous three years on CSR activities. The Act also categorically lists out a set of activities eligible under CSR. Companies may implement these activities, taking into account the local conditions, after seeking board approval (indicative Activities of CSR).

Corporate Governance and CSR: The Interplay

A traditional view suggested a contradiction between CSR and Corporate Governance. Corporate Governance was related to profit maximization and provided protection to shareholders who have provided capital to firm, while CSR apparently was against profit maximization because it suggested a set of actions beneficial for external stakeholders that may not be good for a shareholder. But now it is the not case or not anymore. Corporate Governance is an umbrella term and CSR is gradually getting fused into the company's corporate governance practices (Mullerat, R., & Brannan, D., 2011). Though it can be said that CSR and CG are not one and the same, yet they are overlapping, interrelated. CG emphasizes external regulation and internal control of the firm by legal means and assumes that the monitoring function is controlled by the Board of Directors and senior managers. CSR is about how the firm regulates its own behavior with reference to social norms, now including external, mainly 'soft', governance systems (e.g. multi-actor, private codes of conducts, commitments, partnerships, associations). Yet CG is often at odds with, or pitted against, CSR, notwithstanding their overlaps. This is true in all business systems, but particularly in the Anglo-American systems (Flopper, U., 2006). Here CSR is sometimes seen as a threat to the agent-principal relationship in which the 'agents' (managers) should simply serve the assumed priority of their 'principals' (shareholders) for short-run profits. But it is clear that the agent-principal relationship is itself misguided and misrepresents proper governance of the company. In short, key corporate governance documents, company law, other regulations pertaining to company responsibility and judicial history confirm that companies do have wider purposes than shareholder's quarterly profits alone. The interests of the company itself, of other stakeholders and of society at large have been recognized as appropriate points of managers' responsibility. Moreover, there is plenty of evidence that not all shareholders are motivated by quarterly returns. Many prize long-term stability, and many recognized the company benefits of CSR investments.

Many of the countries and their CSR initiatives intended to protect the consumer concerns and it is evident from UK, US and Indian CSR initiatives which would reflect on fair and ethical trade systems or investor interests. This contrasts with the CG - CSR links in coordinated market economies (e.g. Denmark, Germany) which yield both greater attention to the labour stakeholders and the collective interest in environmental sustainability. It also contrasts with the CSR in state-led market economies (e.g. France, Korea) which tend to reflect a CG focus on national development. It, indeed, contrasts with CSR in emerging and developing economies which tends to reflect a community orientation reflecting the features of high inter-personal trust and low institutional trust underlying the CG arrangements in many such countries (Sharma, J.P. and Khanna, S., 2014).

However, notwithstanding the ways in which CSR has emerged as a feature of business as usual complementary with their respective CG systems, it seems that there are often deficits in company level governance of CSR. CSR is often removed from 'governance' departments (in HR, marketing); apart from main business (e.g. financial institutions & crisis); CSR accounting is often in parallel with, rather than integrated with, other management accounting; and there is little measurement of social impacts (Hunnicutt, S., 2009). Therefore, the challenges here are considerable, including the integration of CG measures for CSR across MNCs whose business units operate under very different CG systems; and particularly for Small Scale Enterprises (SME) in emerging and developing countries which have underdeveloped CG systems to start with. But CSR does not only reflect CG structures it can also shape them. Thus the fact that an increasing number of companies now fall under new reporting requirements such as come with stock exchange listing (e.g. in the USA, South Africa, China), or with operation in business systems which specify responsibility requirements (e.g. Danish and Swedish non-financial reporting regulations, UK board responsibilities for their companies environmental, social and governance impacts), or sign up to CSR principles and standards should be regarded as a CG opportunity as well as a challenge.

Conclusion

Today both Corporate Governance and CSR focus on ethical practices in business and the responsiveness of an organization to its stakeholders and the environment in which it operates. This conjunction paves the way for Corporate Governance to be driven by ethical norms and the need for accountability, and it enables CSR to adapt prevailing business practices. Given that CSR has become an integral part of the corporate strategy and companies have to be more transparent in their business activities and have to incorporate the social responsibility schemes which they have implemented are directed to be mentioned in their annual report. It is a welcome measure and will ensure employment opportunities, product safety, worker safety, and environmental protection etc. It is also significant note that in India a positive relationship between CSR and proportion of controlling shareholders be seen which implies that the governments are driven by strategic decision of investing into CSR related activities. This is also in line with the positive relationship between insiders' control over board and CSR (Bhaduri, S. N., & Selarka, E., 2016). Thus the present developments in the world and particularly in India with regard to CG strategies Vis-a-Vis CSR will provide the opportunity for CG to reconnect and support its underlying base in social responsibility. Therefore, it could be said that in the present world any company or firm or organization or multinational organisation which would take care of society in which it is operating its business is viewed as the most respected and profitable firm.

References

1. Sharpe, M. E. (1996). Ownership and Control: Rethinking Corporate Governance for the Twenty-First Century By Margaret M. Blair. *Challenge*, 39(2), 62-64.
2. Haldar, K. (2015). The Changing Facets of Corporate Governance and Corporate Social Responsibilities in India and their Interrelationship. *Information Management and Business Review*, 7(3), 6-16.
3. Mullerat, R., & Bronnan, D. (2011). *Corporate social responsibility: the corporate governance of the 21st century*. Alphen aan den Rijn: Kluwer Law International.
4. Swati, K. (2014). Corporate Social Responsibility, Corporate Governance and Sustainability: Synergies and Inter-Relationships. *Indian Journal of Corporate Governance*, 7(1).
5. OECD principles of corporate governance/ Organisation for Economic Co-operation and Development. (2004). Paris: OECD; also see, Verma DP and Kumar R. (2012). Relationship between Corporate Social Responsibility and Corporate Governance, *IOSR Journal of Business and Management (IOSR/JBM)*, 2(3), 24-26.
6. Sharpe, M. E. (1996) supra note 1.
7. Principles of Good Corporate Governance have been incorporated to have Transparency, Accountability and Responsibility on directors.
8. Ritchie, J. M. (2015, May 12). Corporate Governance In India. Retrieved March 27, 2017; from <http://www.corpgov.net/2015/05/corporate-governance-in-india/>.

9. Vaish Associates. Corporate Governance Framework In India - Corporate/Commercial Law - India. Retrieved March 27, 2017, from <http://www.mondaq.com/india/x/456460/Shareholders/Corporate+Governance+Framework+In+India>.
10. Amendment in relation to practices of Indian companies' corporate governance its social responsibilities on April 17, 2014
11. Halder, K. (2015). The Changing Facets of Corporate Governance and Corporate Social Responsibility in India and their Interrelationship. *Information Management and Business Review*, 7(3), 6-16.
12. Haerens, M., & Zott, L. M. (2014). *Corporate social responsibility*. Farmington Hills (MI): Greenhaven.
13. G. H., & A. S. (n.d.). Corporate Social Responsibility As Per New Indian Companies Act 2013 - Corporate/Commercial Law - India. Retrieved March 27, 2017, from <http://www.mondaq.com/india/x/302204/Corporate+Commercial+Law/Corporate+Social+Responsibility+Now+A+Mandated+Responsibility>.
14. The Ministry of Corporate Affairs (MCA) has vide its notification dated 27 February 2014, and in exercise of powers conferred by section 1(3) of the Companies Act, 2013, notified 1 April 2014 as the date on which the provisions of section 135 and Schedule VII of the Act shall come into force. The MCA has also notified the Companies (Corporate Social Responsibility Policy) Rules, 2014 to be effective from 1 April 2014.
15. Section 135 of the Companies Act 2013 - with five sub-sections. It is expected that there won't be more than 12 to 14 rules that are currently under formulation.
16. The indicative activities which can be undertaken by a company under CSR have been specified under Schedule VII of the Act.
17. Mullerat, R., & Brennan, D. (2011). *Corporate social responsibility: the corporate governance of the 21st century*. Alphen aan den Rijn: Kluwer Law International.
18. Hoppe, U. (2006). *What drives Corporate Social Responsibility (CSR): a comparative analysis between the United Kingdom and Germany*. Belfast: Queen's University of Belfast.
19. Sharma, J.P. and Khanna, S. (2014). Corporate Social Responsibility, Corporate Governance and Sustainability: Synergies and Inter-relationships. *Indian Journal of Corporate Governance*, 7(1).
20. Hunnicutt, S. (2009). *Corporate social responsibility*. Detroit, MI: Greenhaven Press.
21. Bhaduri, S. N., & Selarka, E. (2016). *Corporate Governance and Corporate Social Responsibility of Indian Companies*. Singapore: 87-113, Springer Singapore.



About the Editors

Dr. Amit Prasad Works as Guest Lecturer , Department of Commerce , R.S. More College, Govindpur (A constituent Unit of Binoba Bhave University , Hazaribag, Jharkhand). Earlier he has served as a Guest Faculty(Department of Management), with the Study Center of Sikkim Manipal University. He has done M.Com and Ph.d (Doctor of philosophy) in Commerce from P.G. Department of commerce and Business Management , V.B.U Hazaribag. he has contributed several research paper In leading journal and seminars. he has attend and presented various papers in national and Internationals seminars / Conference .He has also received best paper presentation award at different conferences. He has more than 7 years of teaching Experience.

He has the Editor of Souvenir committee in U.G.C Sponsored National Seminar or " Financial Market And Financial Literacy" (With special focus on Investment and financial Literacy) organized by Department of Commerce P.K.Roy Memorial College, Dhanbad. He has also edited of the book " Economic and Business Environment" Published in 2016 ,ISBN NO.-978-9385000-75-1(Bharti Publications , New Delhi). He also has to credit to successfully organized many conferences and edited books.

Dr. Lalit Kumar Pant is a management professional and academican. Presently Dr. Pant is working as Manager (Commercial) with Indian Farmers Fertiliser Cooperative Limited at its Corporate Office in Delhi. After Graduation, he did Bachelor of Laws, MBA, M.Phil and Ph.D. in Management. In addition Dr. Pant also acquired additional qualifications viz. PGDPM&IR and PGDMM. He has attended several National and International Seminars & Conferences and presented papers. Series of research papers are in his credit. Dr. Pant authored books entitled "Overview of Supply Chain Management" and "Best Use of Organizational Behaviour and Human Resource Management". Other books on Marketing Management and Strategy of Management are under publication.



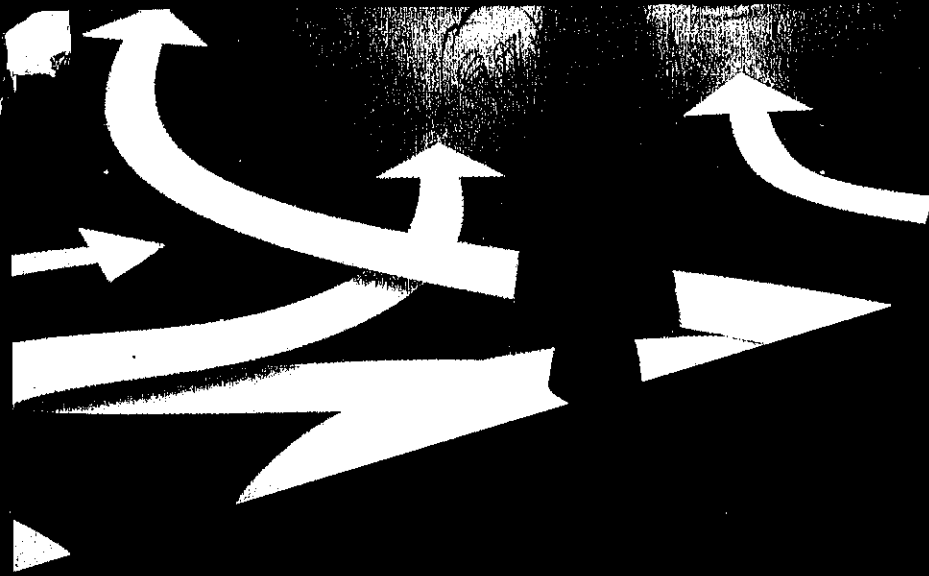
Bharti Publications, New Delhi

E-mail: info@bhartipublications.com • bhartipublications@gmail.com
www.bhartipublications.com

ISBN 978-93-85000-83-6



Price Rs. 1995/-



Management

New Trends & Challenges

25

Edited By:

- *Dr. Manju*
- *Dr. Ombir singh*



Increasing Scenario of Cyber Risks in Indian Banking Sector and the Initiative Measures to Tackle

Dr. G. Mallikarjun*

Abstract

The Banks in India are equipped with innovative ideas of technology, making banker-customer relationship a user friendly which was not there in the recent past. However, the said advanced technology has its adverse effect on banks which led to the threats of frauds known as 'cyber frauds' which is the focal point of this research paper. According to the studies on cyber frauds in banking and financial sector in India, it is revealed that the most common motive for the cybercrimes is illegal gain and greediness of the human beings. After demonetization in 2016, financial institutions shifted to digital channels like online banking and mobile banking transactions with various apps paving way to commit cyber frauds. This has prompted sectors like banking and financial institutions to conduct rapid migration of their services to the internet and mobile platforms without fully comprehending the threats associated with them. This is a predominant reason why the banking sector is vulnerable to an array of cyber security threats. The recent cybercrimes in the banking sector adds more weight to this argument. In response, the Indian Government and Reserve Bank of India (RBI) came up with policies and legal frameworks to deal with these cyber-attacks. However, the hackers are always ahead in their sinister role of implementing new innovative threats and it is the need of the hour that the government should react immediately by which a new mechanism in mitigating the cyber threats be evolved. Therefore, the author intends to bring about the cyber-threats in banking sector and its backdrop. Further, the discussion will focus on the urgent need on comprehensive Cyber Security Policy and the law.

Keywords: Cyber frauds, Cyber frauds threats, Digital channels, Demonetization

Introduction

Cyber Crime is an illegal activity in the cyber space with the internet involving advanced technology and software). Cybercrimes are altogether not new types of crimes but illegal activities that are carried on in a novel manner through technology, internet, and electronic devices in cyber space. Since years, illegal gain is the most common motive for the cybercrimes according to National Crime Records Bureau (NCRB). With the introduction of digitalization and in order to cope up economically in the trend of globalization, the States are approving e-commerce. E-Commerce is encouraged to ease the transactions across the globe, there by establishing a networking of economic system that is centralized in the form of data.

* Assistant Professor of Law, NALSAR University of Law, Hyderabad

Moreover, demonetization in 2016 made the financial sector even more vulnerable to cyber attacks as the institutions had to shift to digital channels. The recent cybercrimes in the banking sector adds more weight to this argument. In response, the Indian Government and Reserve Bank of India (RBI) came up with policies and frameworks to deal with these cyber-attacks. Mere digitalization will not invoke the cybercrimes, but the lack of regulatory mechanism has had led the State in perpetuating the cybercrimes. However the attackers are always a step ahead of the Government but if the defense mechanisms are implemented proactively, then the impact of cybercrimes in finance sector can be minimized.

Vulnerability of Banking Sector

Nationalization of Banks was one of the first claimed steps towards restructuring Indian economy for independence. A similar claim was initiated in reallocating the reserves, called the "Demonetization". Added to digitalization, demonetization encouraged only e-commerce which made the Banking sector in India vulnerable. The aftermath of demonetization, as the research and evidences appear, has led to escalation of "Cyber Crimes" in Banking Sector. Digitalization has catalyzed the "Cyber Crime" in banking sector. It is important to focus on banking sector because not just the national economic growth will be at stake but also the consumers of the Banking sector are a large chunk of population. After demonetization, cashless transactions were the only resort apart from handling cash-in-hand we had.

Cybercrimes reported in India rose 25 times over the last eleven years (2005 to 2016), from 48 in 2005 to 12,317 in 2016 according to NCRB. India has ranked third world-wide, next to United States and China as a source of malicious activity according to a report.² NCRB released a report on cybercrimes for the year 2016 in 2017 in which Uttar Pradesh, Delhi and Mumbai were on top of the list with most cybercrimes in the category of States, Union Territories and cities.³ Illegal access was the most common motives for the cybercrimes according to the report.⁴ This has remained the most common motive for cybercriminals among various motivations overtaking other motives for the past many years. This is also one of the reasons why the customers of bank are often victims of internet based frauds and other malware attacks.

McAfee, a cyber-security company released a report titled "New Security Priorities in an Increasingly Connected World" based on a survey which indicates that 79% of the urban Indians have expressed concern about online security and safeguarding their identity and privacy. The consumers primarily rely on monitoring their identity which includes checking online bank and credit card accounts and alert for unauthorized charges⁵ deducted by the Banks. In a country like India, 68.84% is rural and at least 70% Indians live in rural India which means India witnesses a lack of serious and stringent "cyber and technological" awareness. One of the biggest threats among the numerous threats aimed at bank systems and their valuable customers and which is also hardest to detect is that of malicious careless and compromised users. Moreover, when the insiders like employees, contractors who work for Banks, abuse their privileged accesses are being compromised by external attackers, then the valuable data is easily exposed as they have legitimate access to sensitive data and IT systems. Criminals can send phishing emails or set up fake websites that dupe consumers into giving away sensitive financial data. They can also leverage information from social media sites so as to social engineer their way into accounts via customer service.

After Demonetization in the year 2016, financial institutions shifted to digital channels like online banking and mobile transactions which means that there is more to protect. India is the second largest number of Smartphone users in the world. And, internet acts as a catalyst in driving the growth of smartphone users in India. This has prompted sectors like banking and financial services to conduct rapid migration of their services to the internet and mobile platforms without fully comprehending the threats associated with them. This is also one of the reasons why the banking sector is vulnerable to an array of cyber security threats.

Types of Predominant Financial Cybercrimes

- i. **Hacking⁶:** It is an unauthorized control/access in to the computer system or network by which entire data will be destroyed from the computer. Hackers write or use ready-made computer programs to attack the target computer to destruct. Some hackers hack for personal monetary gains, such as to stealing the credit card information, transferring money from various bank accounts to their own account followed by withdrawal of money.
- ii. **Phishing:** The act aims at stealing confidential information and other important details by sending an e-mail to a user falsely claiming to be an established enterprise in an attempt to get private information such as passwords and credit card, social security, and bank account numbers that will be used for identity theft. "Credit card fraud" is a wide ranging term for crimes involving identity theft where the criminal uses the other person's credit card to fund their transactions. Credit card fraud is identity theft in its simplest form.
- iii. **Vishing:** Vishing involves calls to victims using fake identity to gain access to private personal and financial information. They may claim to be from a bank asking you to dial a number (provided by VoIP service and owned by attacker) and enter your account details.
- iv. **Data diddling:** It involves changing data prior or during input into a computer. The information is changed from the way it should be entered by a person typing in the data, a virus that changes data, the programmer of the database or application, or anyone else involved in the process of having information stored in a computer file. It also includes automatic changing the financial information for some time before processing and then restoring original information.
- v. **Denial of Service:** Attackers explicitly attempt to deny the service to intended users by flooding a computer resource with more requests than it can handle to disallow legitimate network. This causes the web server to crash or slow down significantly so that no one can access it.
- vi. **ATM Skimming:** ATM Skimming is when a skimming device is installed atop the ATM machine to collect card numbers and personal identification number (PIN) codes so that fraudulent transactions are carried out later using the collected data.
- vii. **Spyware:** It is a software that would gather information (about a person or organization without their knowledge or consent), that may send such information to another entity. It is an easy way that online banking credentials are stolen and used for fraudulent activities. Spyware works by capturing information either on the computer, or while it is transmitted between the computer and websites⁷.
- viii. **Keystroke Logging:** Key logging is a method by which one can keystrokes and mouse clicks. It is 'Trojan' software programs that will be installed via a virus, which will be used get or identify with user ID and password, account number, and anything else that has been typed with display settings.
- ix. **Credit Card Redirection:** "It is an illegal practice to steal credit and debit card information compromising legitimate web services. The user that access to the compromised e-commerce site is silently redirected to a well designed phishing site, so that the website could acquire card info and send it back to the attackers. The redirection is possible also modifying the credit card processing file giving to the criminals the access to all the transaction data including credit card details (name, address, CC and CVV). The phishing site was usually well crafted adopting also a valid SSL certificate to reassure the users, Credit Card Redirection is considered an evolution of phishing"⁸.

Cyber-Attacks in Banking Sector: An International Perspective

It is to be noted that Cyber attacks on banking and financial sector are increasing day by day in the world with a greater frequency and intensity. In February 2016, the hackers stuck at Bangladesh Bank. They target customized software, which would act as a liaison between a bank's system and the central SWIFT infrastructure. Cyber thieves had issued instructions to transfer US\$951 million out of Bangladesh banks account at the New York Federal Reserve. Most were declined but attackers could successfully get away with US\$81 million⁹.

In 2016, hackers stole over £2.5 million from 9,000 customer accounts in Tesco bank which was the largest ever cyber-attack on United Kingdom.¹⁰ While it's unclear of the exact nature of the attack, one theory is that the hackers got their hands on customers' debit card information, and proceeded to use it in an automated attack. Another Bank, HSBC was hit by a distributed denial of service (DDoS) attack in the same year which targeted its personal banking websites.¹¹ A United States cyber firm FireEye revealed that mobile apps of seven banks in India were infected with malware that can steal sensitive information.¹² This firm informed the banks that the malware has the capability to steal user credentials and the names of the banks to the public weren't disclosed to prevent the misuse of the vulnerabilities. The firm has anticipated these types of cyberattacks which eventually happened and affected banks in Ukraine, Ecuador and India with losses more than \$100 million.¹³ India's Computer Emergency Response Team (CERT-In) had directed banks to be on high alert like never before, for possible cyber-attacks emanating from foreign locations which includes hacking and phishing.¹⁴

More than 3.2 Million Debit cards from major Indian banks such as HDFC Bank, ICICI Bank, Axis Bank and SBI were hacked which resulted in a loss of Rs. 1.3 crore according to Business Times report. This was found out when several victims reported unauthorized transactions which have reportedly originated in China.¹⁵ Wanna Decryptor or WannaCry is a ransomware that has taken down health services in the UK, a telecom network in Spain and government computer systems in Russia in the year 2017.¹⁶ More than 100 computer systems of Andhra Pradesh police were hacked. This Ransomware locks down systems by encrypting the data on it to decrypt and get it back for a ransom amount and the outdated Windows XP version that turned out to be the weak link, crippling information systems around the world is used by 70% of the Indian ATM network. It is pertinent to note that Minister of State for Home Affairs, Hansraj Gangaram Ahir said that out of 50 incidents of cyber-attacks affecting financial organizations have been reported from 2014 to June, 2017.¹⁸ Even Indian Banks lost Rs 88,553 every hour on an average to cybercrime. The total money lost from April 1, 2014 to June 30, 2017 could have written off 50,400 farm loans at Rs 50,000 each.¹⁹ The data is compiled from frauds related to credit, debit and ATM card misuse in internet banking. The report also mentioned that the growing number of cybercrime cases is just an indication of vulnerable backend systems but also a warning that the financial system could underestimate the threat any longer.²⁰

Cybercrimes: Mitigating Measures Initiated in India

Measures by the Central Government

Indian Computer Emergency Response Team (CERT-In): It was created by the Department of Information and Technology in 2004 and its main function to supervise administration of the Information Technology Act under Section 70B of Information Technology (Amendment) Act 2008²¹. The functions of Computer Emergency Response Team includes a) Collection and analysis of information on cyber incidents, b) Forecast of cyber security incidents, c) Emergency measures for handling cyber security incidents, d) Coordination of cyber incident response activities, e) Issue guidelines and whitepapers related to cyber security.

to information security practices and reporting of cyber incidents²². Later, in the year 2013 Government of India came up with National Cyber Security Policy Indian.

National Cyber Security Policy 2013: This Policy aims to use a combination of institutional structures, people, process, technology and cooperation to prevent and respond to cyber threats and minimize damage from Cyber incidents.²³ In broad terms, this policy intends to create cyberspace ecosystem and strengthen the regulatory framework to deal with cyber threats. The policy additionally calls for creating human resource through training and education programs and to set up institutional systems for capacity building for law authorization offices.²⁴ Making a workforce of 500,000 experts in cyber security was also envisaged in the policy through *Cyber Swachhta Kendra*²⁵

Cyber Swachhta Kendra: This centre will work in collaboration and coordination with the Internet Service Providers, Product and Antivirus companies to notify the citizens regarding the botnet and malware infection if any, and also will assist the citizens to clean their systems.²⁶ This Centre also offers four relevant protective tools for cyber security, they are:

- (a) **USB Pratirodh** is a desktop security solution aimed at controlling the unauthorised usage of removable storage media like pen drives, external hard drives and other supported USB mass storage devices,
- (b) **APPSamvid** is a desktop based application for windows operating system which prevents suspicious applications from running and allows preapproved set of files for execution,
- (c) **M-Kavach** is a mobile device security solution which provides protection against misuse Wi-Fi and Bluetooth resources, a malware that steal personal data and unwanted incoming calls,
- (d) **Browser JSGuard** is a browser extension which detects and defends malicious HTML and JavaScript attacks and it alerts the user when the malicious web pages are visited and a detailed threat report of the webpage is also given.²⁷

National Cyber Coordination Centre (NCCC): This Centre was set up in the year 2017 to scan the web traffic in the country so that cyber security threats can be detected and it derives its powers to do the same as per section 69B of the Information Technology Act, 2000.²⁸ Information sharing and cooperation is an explicit strategy under the 2013 Policy. Consequently, the Indian government has entered into cyber security collaborations with countries such as the USA, European Union and Malaysia. The U.K. assisted in developing the National Cyber Crime Coordination Centre in India.²⁹ The shared principles of the U.S.-India Cyber Relationship Framework provide for the recognition of the leading role for governments in cyber security matters relating to national security.

Initiatives of RBI for the Cyber Security in Indian Banks

Reserve Bank of India has set up a subsidiary, Reserve Bank Information Technology Private Limited (ReBIT) to take care of the IT requirements and for monitoring and regulating internet-based services offered by the central banks and its regulated entities.³⁰ The subsidiary has four verticals – a) Cyber Security b) Research and Innovation c) IT systems Audit and Assessment d) IT Project Management.³¹ As India is moving towards a paperless banking system after demonetization, the subsidiary will help banks address issues on cyber security and evaluate the technological capabilities of banks. The establishment of an IT subsidiary by RBI is a welcome step not only for the Banking sector but also for IT security solutions as it will ensure better compliance with regulations to prevent data theft and to check financial fraud.

Reserve Bank of India issued a comprehensive circular to all banks in India which prescribes the concrete measures to combat cybercrime, fraudulent activities online to retain citizen's confidence and to reduce financial losses.³² A minimum baseline cyber security framework which is indicative

but not exhaustive is also provided in the guidelines like to configure hardware and software applications to protect consumer access credentials etc.³³ Every bank should have their own cyber security policy that outlines the approach for combating cybercrime like continuous surveillance by testing vulnerabilities through a Security Operations Centre (SOC) and should also formulate a Cyber Management Plan (CCMP) whose primary focus is to detect, respond, recover from various threats.³⁴

Conclusion

Despite all the measures initiated by the Government of India and the RBI, the banking sector is still prone to cyber-attacks. This is due to the innovative methods adopted by the cyber-criminals to counter the measures taken up by the government. Experts also suggest that "the most effective ways to move forward with digitisation in order to ensure banks remain completely secure lie in the embracing of crypto-currencies and blockchain technology"³⁵. At any cost, the confidential information and financial information of the consumers be protected, regardless of how it is achieved. The Circular issued by the RBI also highlights the aspects of governance pertaining to dashboards, intelligence, proactive monitoring and management capabilities with sophisticated tools for detection, quick response and backed by data and tools for sound analytics. In addition, banks must keep in mind several other issues while equipping themselves to fight cyber-attacks. Primarily, as a preventive measure, creating awareness among the consumers and users is important. If Indian banks were to proactively implement an intelligent, cross-channel anti-fraud defense mechanism, the impact of cybercrimes can be vastly minimized.

References

1. NCRB DATA 2016: INDIA CONTINUES TO BE A TERRIFYING PLACE FOR WOMEN AND CHILDREN, <https://www.dnaindia.com/variety/ncrb-data-2016-crimes-against-women-human-trafficking-cyber-crime/story/1/20867.html> (visited on May 3, 2018).
2. AS INTERNET USE SPREADS, CYBERCRIMES RISE 19 TIMES OVER 10 YEARS SCROLL.IN, <https://scroll.in/article/809118-as-internet-use-spreads-cyber-crimes-rise-19-times-over-10-years> (visited on May 1, 2018).
3. NCRB report shows trends in cybercrime in cities, states and union territories and it contains some surprising insights- Technology News, Firstpost Tech2, <https://www.firstpost.com/tech/news-analysis/ncrb-report-on-trends-in-cybercrime-in-cities-states-and-union-territories-and-contains-some-surprising-insights-424285.html> (last visited Mar 30, 2018).
4. *Ibid.*
5. CYBER SECURITY: IDENTITY PROTECTION, PRIVACY ARE MAJOR AREAS OF CONCERN FOR URBAN INDIANS: REPORT BY NCRB, <https://www.livemint.com/Technology/HzbhyJaRNApceBNJOcwsXJ/Cybersecurity-Identity-protection-privacy-are-major-areas.html> (visited on May 1, 2018).
6. Section 43(a) read with section 66 of Information Technology (Amendment) Act, 2008 a hacker can be punished.
7. <https://en.wikipedia.org/wiki/Spyware> (last visited on May 5, 2018).
8. Pierluigi Paganini, Credit Card Redirection, the evolution of phishing [https://securityaffairs.co/wordpress/14180/network-security/credit-card-redirection-the-evolution-\(last-visited-May-3,-2018\).html](https://securityaffairs.co/wordpress/14180/network-security/credit-card-redirection-the-evolution-(last-visited-May-3,-2018).html) (last visited May 3, 2018).
9. M.Ramamoorthy, Cyber Risk in Banking Sector :Time to Scale up Cyber Security and Combat Cyber Challenges, <http://www.bankingfinance.in/cyber-risk-banking-sector.html> (last visited on May 3, 2018).
10. TESCO BANK HACK: HOW IT HAPPENED AND HOW YOU CAN PROTECT YOUR ACCOUNT THIS IS MONEY, <http://www.thisismoney.co.uk/~article-3930118/index.html> (last visited on May 3, 2018).
11. HSBC ONLINE SERVICES HIT BY DDoS ATTACK COMPUTERWEEKLY.COM, <http://www.computerweekly.com/News/4500272109/HSBC-online-services-hit-by-DDoS-attack> (last visited May 3, 2018).
12. MOBILE APPS OF 7 INDIAN BANKS COMPROMISED: FIRE EYE - BUSINESS LINE, <https://www.thehindubusinessline.com/money-and-banking/mobile-apps-of-7-indian-banks-compromised-fireeye/article9618128.ece> (last visited May 5, 2018).

13. *Ibid.*
14. CYBER TERRORISTS TARGETING INDIAN BANKS LIKE NEVER BEFORE; TIME TO BE ON HIGH ALERT ZEE NEWS, http://zeenews.india.com/business/news/finance/cyber-terrorists-targeting-indian-banks-like-never-before-time-to-be-on-high-alert_1942390.html (last visited on May 5, 2018).
15. MASSIVE ATM CARD HACK HITS INDIAN BANKS, 3.2 MILLION DEBIT CARDS AFFECTED HUFFINGTON POST INDIA, https://www.huffingtonpost.in/2016/10/20/massive-debit-card-hack-hits-indian-banks-3-2-million-cards-aff_a_21587810/ (visited on May 3, 2018).
16. Saikat Das, 70 per cent of ATMs in India easy prey for cyber attackers, CBI to probe whistleblower's laundering charges against Chanda Kochhar's husband, Chanda Kochhar "a huge beneficiary" of Videocon loan, says whistleblower, How NCLTs are sending a strong message to truant promoters, THE ECONOMIC TIMES, May 14, 2017, <https://economictimes.indiatimes.com/industry/banking/finance/banking/70-per-cent-of-atms-in-india-easy-prey-for-cyber-attackers/articleshow/58666596.cms>.
17. *Ibid.*
18. TOTAL OF 50 CYBER-ATTACK INCIDENTS REPORTED IN FINANCIAL SECTOR, THE INDIAN EXPRESS, <http://indianexpress.com/article/technology/tech-news-technology/50-cyber-attack-incidents-reported-in-financial-sector-govt-4777350/> (visited on May 3, 2018).
19. BANKS LOST Rs 88,553 AN HOUR TO CYBERCRIME IN LAST 3 YEARS - TIMES OF INDIA THE TIMES OF INDIA, <https://timesofindia.indiatimes.com/india/banks-lost-rs-88553-an-hour-to-cybercrime-in-last-3-years/articleshow/59747797.cms> (visited on May 3, 2018).
20. *Ibid.*
21. WHAT IS CERT-IN (THE INDIAN COMPUTER EMERGENCY RESPONSE TEAM)? - DEFINITION FROM WHATIS.COM WHATIS.COM, <http://whatis.techtarget.com/definition/CERT-In-the-Indian-Computer-Emergency-Response-Team> (last visited on May 5, 2018).
22. ICERT, MINISTRY OF ELECTRONICS AND INFORMATION TECHNOLOGY, GOVERNMENT OF INDIA, <http://meity.gov.in/content/icert> (last visited on May 5, 2018).
23. NATIONAL CYBER SECURITY POLICY-2013, MINISTRY OF ELECTRONICS AND INFORMATION TECHNOLOGY, GOVERNMENT OF INDIA, <http://meity.gov.in/content/national-cyber-security-policy-2013-1> (visited on May 3, 2018).
24. NATIONAL CYBER SECURITY POLICY 2013: AN ASSESSMENT | INSTITUTE FOR DEFENCE STUDIES AND ANALYSES, https://idsa.in/idsacomments/NationalCyberSecurityPolicy2013_stomnr_260813 (last visited on May 12, 2018).
25. This is a Botnet Cleaning and Malware Analysis Centre which is a new desktop and mobile security solution for a secure cyber space in India, which was launched by Computer Emergency Response Team in the year 2017, see INDIA LAUNCHES "CYBER SWACHHTA KENDRA" TO PROTECT CITIZENS THE INDIAN EXPRESS, <http://indianexpress.com/article/india/india-launches-cyber-swachhta-kendra-to-protect-citizens-4536440/> (last visited on May 12, 2018).
26. *Ibid.*
27. CYBER SWACHHTA KENDRA: SECURITY TOOLS, <https://www.cyberswachhtakendra.gov.in/security-tools.html> (last visited May 3, 2018).
28. CYBER COORDINATION CENTRE MADE OPERATIONAL: IT MINISTRY THE INDIAN EXPRESS, <http://indianexpress.com/article/india/cyber-coordination-centre-made-operational-it-ministry-4789272/> (last visited May 3, 2018).
29. CYBER SECURITY IN THE INDIAN BANKING SECTOR, https://www.legistify.com/blogs/view_detail/105-cybersecurity-in-the-Indian-banking-sector (last visited May 3, 2018).
30. WHAT EXACTLY IS THE ROLE OF THE NEW IT SUBSIDIARY OF THE RBI? <https://www.moneylife.in/article/what-exactly-is-the-role-of-the-new-it-subsidiary-of-the-rbi/47117.html> (last visited on May 3, 2018).
31. *Ibid.*
32. RESERVE BANK OF INDIA - NOTIFICATIONS, <https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10435&Mode=0> (last visited May 12, 2018).
33. HOW CAN RBI'S LATEST GUIDELINES HELP INDIAN BANKS COMBAT CYBERCRIME?, <https://www.clari5.com/multichannel-banking-technology/can-rbis-latest-guidelines-help-indian-banks-combat-cybercrime/> (last visited May 13, 2018).
34. *Ibid.*
35. Cybersecurity In The Indian Banking Sector: <https://www.legistify.com> (last visited on May 13, 2018).

About the Editors

Dr. Manoj is working at an Assistant Professor, Department of Information, School of Liberal Arts, Chaudhary Charan Singh University, Meerut. He has done MA, M. Phil., MBA (Finance), and Ph.D. (Information) from Maharshi Dayanand University, Rohtak, Haryana. He has done Information and worked with Noida International University, Rohtak Global Education, India and Chaudhary Buddha University. She has more than 10 years of teaching and research experience in different capacities with an exposure of Corporate as well as Research. She has contributed numerous articles in leading Journals and Seminars. She has also presented his research paper in various national and international conferences and seminars.

Dr. Ombir Singh (Ph.D., Economics, UGC-NET (Economics), MBA in Finance, M.A. in Economics) is Assistant Professor, School of Management, Gautam Buddha University, Greater Noida, Uttar Pradesh (India) since 2009. He was earlier Assistant Professor, Department of Economics, Maharshi Dayanand University, Rohtak. He also served at Institute of Development Studies as member of the research team of Planning Commission Project on State Development Report (Haryana). He has more than 11 years experience of teaching and research. His research interests are focused on Indian Economy, International Trade and Finance. He has been a member of various academic and government bodies. He has published several research papers in Indian and foreign journals of repute. He is the chief Editor of Interdisciplinary Journal of Management and Behavioural Sciences.



Bharti Publications, New Delhi

E-mail: info@bhartipublications.com • bhartipublications@gmail.com

www.bhartipublications.com

ISBN 978-93-86608-60-4



Price- Rs. 1990/-

Theoretical Debates on Migration, Identity and Development

Noor Ameena*

ABSTRACT

Migration is a complex phenomenon. Migration, as a process, is closely intertwined with the development of a region. Understanding migration, in the broader sense, is ingrained in the study of development and social change. At the same time, the dynamics of individual lives affected by migration from the lens of migrants and the associated lives in the sending and receiving regions are equally significant. While early theorists maintained that the reasons for migration are purely economic in nature, later scholars have analysed it as a phenomenon, the causes and effects of which are social, cultural, economic and historical. This paper tries to trace the historical and emerging debates on migration. It also tries to understand migrant as an individual with his own life-worlds, beyond a mere economic entity. The paper also tries to explain the different coping mechanisms of the migrant, including social networks, analyses the questions of post- migration adaptation, alienation and exclusion/ inclusion. While this is no way a complete account of the migration theories, it gives a sense of the different debates around the question of migration.

Keywords: *Migration, theories of migration, Identity, and Development.*

*Tata Institute of Social Sciences, Mumbai.

INTRODUCTION

The phenomenon of migration has an important place throughout human history. Migration of people from one place to another begins with the origin of human species itself. Ever since the formation of nations and national boundaries, people have been moving within and across the borders in search of better avenues and opportunities. Several attempts have been made in the past as well as in the present to theorise the concept of migration; however there has not been a single theory widely accepted by all, explaining the emergence and growth of migration throughout the world; all we have is a fragmented set of theories developed in isolation to one another, and sometimes, not always segmented by disciplinary boundaries. The phenomenon of migration differs both as regards causes of emergence and its effects, and also its types. On the basis of nature, migration can be categorized as internal or international; on the basis of duration, short term and long term; on the basis of distance, short distance and long distance; and on the basis of volition, it can be voluntary or forced. Short term migration can be seasonal (e.g. people migrating from Bihar to Punjab during agricultural season) or circular in nature. In circular migration, people move in and out of the place of origin and destination; people who move out of the place of origin keeps shifting in the place of destination depending on the availability of opportunities. Jan Breman classifies the large informal migrant workforce in the country as circular migrants or 'foot loose labour'.²

Migration is linked in complex ways to class, gender, generation, ethnicity and other social cleavages, which are embodied in hierarchies of power and social status, in positions in home and host communities, and in work and domestic relationships all of which may be transformed in the course of the migratory process.³ Each migration is unique with its own characteristics and to capture the same in a single theoretical bracket is neither necessary nor desirable. It involves at the micro level,

the study of the aspirations and capabilities of mobility of an individual, and at the macro-level, the study of migration in the larger context of development and globalization. In this paper, the author tries to trace the historical and emerging debates on migration – its causes and effects.

HISTORICAL DEBATES ON MIGRATION

Early theories of migration: There is no simple answer to the question as to why people migrate. Ravenstein, the earliest migration theorist attributes economic factors as the prime causal factor for migration. According to him, majority of migrants go only a short distance; on the other hand, long distance migrants by preference go to one of the greatest centers of commerce and industry. Ravenstein conceptualizes migration as a movement triggered by a compelling factor, say a booming industrial Centre. People closest to the industrial Centre would migrate there; the gaps left by them will be filled by people from more distant areas. Each migration flow produces a compensating counter flow. This movement will continue until the attractive force of the pull factor is completely dispelled with. Urban residents are relatively less mobile than rural inhabitants.⁴ While Ravenstein's theory is useful to understand migration as a process, it fails to explain several questions like why only certain people migrate and not others and to understand the rationale of cluster formation of migrants in the receiving end. Moreover, the reasoning of this model is confined to economic factors. Migration of people occurs due to 'push and pull' factors. Migration occurs when the pull factors at the place of destination outweighs the push factors at the place of origin. Push and pull factors of migration are forces that can either induce people to move to a new location or oblige them to leave old residences; they can be economic, political, cultural, and environmentally based. Push factors are conditions that can drive people to leave their homes, say, lack of employment opportunities, low wages, 'Primitive' conditions; desertification; famine/drought; political fear/persecution; poor medical care; loss of wealth; and natural disasters. Pull factors are exactly the opposite of push factors; they are factors that attract people to a certain location. Examples of these push factors are job opportunities;

¹ Douglas S. Massey et al., "Theories of International Migration: A Review and Appraisal", *Population and Development Review* 19 (1993): 431.

² Jan Breman, *Footloose Labour: Working in India's Informal Economy*, (New York: Cambridge University Press, 1996).

³ Nicholas Van Hear, "Theories of Migration and Social Change." *Journal of Ethnic and Migration Studies* 36, no. 10, (2010): 1531, <https://doi.org/10.1080/1369183X.2010.489359>.

⁴ Ravenstein, E.G, "The Laws of Migration", *Journal of the Statistical Society of London* 48, no. 2 (1885): 167, <http://www.jstor.org/stable/2979181>.

better living conditions; political and/or religious freedom; enjoyment; education; better medical care; and security.⁵ Lee explains that apart from the push and pull factors at the places of origin and destination, 'intermediary obstacles' also determine the volume of migration which include the socio-economic factors, stage of life cycle of individuals (age, marital status) among others.⁶

1. Neo-classical theory of migration: Neo-classical theorists view migration as a human capital investment, where the decision to migrate is taken by a rational actor after taking into account the costs and benefits of migration; free choice and access to full information is assumed. Rational individuals migrate when the expected net returns are greater than the country of origin. The net return in each future period is estimated by multiplying the observed earnings with the probability of obtaining a job in the destination. Policies that affect the expected earnings in sending and receiving regions can influence the size of migration flows.⁷ The neo-classical theory was further expanded by Stark, replacing 'individual' with 'household' as the Centre of analysis, which came to be known as "New Economics of Labour Migration". The decisions on migration are taken in the context of family and household and migration is seen as a form of portfolio diversification by families.⁸ Decisions about migration are not taken in an ideal world of free choice in which individuals rationalize in order to maximize net advantage. There are degrees of autonomy and constraint that influences the individual and group decisions about migration. Often it is suggested that analysis of structural patterns alone, like poverty, conflict, and unemployment or wage differentials is insufficient to capture the dynamics and patterns of migration. One has to understand the motivation, attitudes and peoples understanding of the structures

within which they act.⁹ Neo-classical development economists believed that existence of economic disparities across regions are sufficient to generate migrant flows, and that in the long run, such migrant flows would help equalize the wages and conditions of labour in developed and underdeveloped regions, leading to an economic equilibrium which in turn would reduce migration. This 'neo-liberal' or 'rational choice' approach cannot capture all the aspects of migration. Not only is it narrow in its vision (considers only economic reasons for migration), faulty in its assumptions (assumes ideal conditions of full information of wages and other factors, and discards entry barriers like government restrictions on visa etc. as market imperfections), but also inflated in its conclusion (it concludes that migration in long run would lead to economic equilibrium and development which would result in elimination of the root causes of migration and thence would lead to reduction in migration flows).

2. Under-development Theory of Migration: The underdevelopment theory of migration was propounded by dependency and world system theorists in response to the Western conspiracy of presenting Western growth model as the only route towards modernisation.

To them, underdevelopment was a legacy of European colonialism. Capitalist development has always needed cheap labour. In this sense migration is analysed as a class phenomenon and uneven development is seen as the basic cause of labour migration. Regional disparities are inbuilt in the capitalist model of development, and in the process of its expanded reproduction, it further accentuates those disparities, creating an 'enclave-hinterland' relation, small enclaves of high capital activity connected to the far-flung hinterlands for the purpose of both labour and product market. Say for example, the penetration of multi-national corporations into less-developed economies accelerated rural change, leading to poverty, displacement of workers, rapid urbanization and the growth of informal economies, while at the same time, MNCs earn huge profit in the process benefiting the core. This is true for the industrial as well as agricultural development under

5 P. Krishnakumar and T. Indumathi, "Push and Pull Factors of Migration", *Global Management Review* 8, no.4 (2014): 8.

6 Everett S. Lee, "A Theory of Migration", *Demography* 3 no.1 (1966): 47. <http://www.jstor.org/stable/2060063>.

7 John R. Harris and Michael P. Todaro, "Migration, Unemployment and Development: A Two-Sector Analysis", *American Economic Review* 60 no.1 (1970): 126. <http://www.jstor.org/stable/1807860>.

8 Oded Stark, *The Migration of Labour*, (Cambridge: Basil Blackwell, 1991).

9 Christopher Mc Dowell and Arjan De Haan, "Migration and Sustainable Livelihoods: A Critical Review of the Literature", (IDS Working Paper 65, Institute of Development Studies, 1997), <https://www.ids.ac.uk/files/dmfile/Wp65.pdf>.

the dominant impulse of capitalist rule. In the Indian context, Singh, (1998) clearly brings in how the 'enclave-hinterland' relation played out in the growth of capitalist agriculture in Punjab, utilizing the free flow of migrants from Bihar.¹⁰ The under-development theorists argue that for every developed region (core), there is a hinterland which paid the cost of its development. These kinds of arguments are the aftermath of anti-colonial struggle.

3. Migration, Urbanisation and Growth of Informal Sector: Urbanisation, industrialization and uneven development have its role to play in migration of people. Lewis (1954) envisaged a two-sector model consisting traditional agricultural sector and industrial sector, wherein the surplus labour in the traditional agricultural sector is absorbed by modern industrial sector thereby promoting industrialization and stimulating development. Harris-Todaro model explains rural-urban migration as a human capital investment where the decision to migrate is taken by a rational actor after taking into account the costs and benefits of migration. A rational actor examines the rural-urban wage differential (existing income and expected income) and the probability of getting a job after migration.¹¹ Thus, migration offers two possibilities- to obtain a high paying formal sector job or low paying informal / self-employment. When jobs are increasing and wages scale up in cities, people from rural areas migrate to cities. However, the rate of growth of formal sector employment in cities has been abysmally slow, taking into account the rate of growth of cities themselves. When wages increase in cities, more people migrate to cities, with no corresponding increase in the availability of formal sector jobs which would force the large number of migrants to urban informal sector. Thus, despite being individually rational, extensive rural-urban migration generates social costs for crowded cities, creating congestion and pressure on urban infrastructure. Informal sector here is taken to mean urban informal sector/ non-agricultural sector. One of the greatest lessons from the Harris

¹⁰ Manjit Singh, "Bonded Migrant Labour in Punjab Agriculture." *Economic and Political Weekly* 32 no.1, (1998): 518.

¹¹ Michael C. Todaro and Stephen C. Smith, *Economic Development*, (Boston: Pearson Education, 2012).

Todaro model was that as jobs grow in urban areas, unemployment also grows and increasing informalisation is just a reflection of the same.

However, most of the literature on migration, including Harris-Todaro model, focuses unduly on the transition from a rural to an urban society, while disregarding other types of migration. This focus follows a perception of historical developments in Europe, where migration has often been perceived as the result of the uprooting of the peasantry in the process of industrialisation. However, migration was a common part of the European economy even before industrialisation. And in developing countries, the largest proportion of migrants moves between rural areas.¹² Intra-rural migration is the least studied form of migration.¹³ Some theorists argue that while neo-classical theorists inflate the rational choice of individuals, while under-development theorists devalue the individuality and the limited choice exercised by the migrants. Literature that usually departs critically from neo-classical models sees migration not as a choice for poor people, but as the only option for survival after alienation from the land and highlights the exploitation of migrants in both destination and source areas. While exploring the temporary migration in Eastern India, it was observed "this is not forced migration; Yet not is it entirely voluntary as people are often compelled by economic circumstances, including structures of inequality in their home localities, to take risky journeys and undertake arduous, unhealthy work that they would not take part in if they had alternative means of livelihood."¹⁴

EMERGING DEBATES ON MIGRATION

It has long been a question among the academicians: whether migration leads to development or development leads to migration.¹⁵ For long,

¹² Arjan de Haan, "Livelihoods and Poverty: The Role of Migration – A Critical Review of the Migration Literature", *Journal of Development Studies* 36 no.2 (1999): 1, <https://doi.org/10.1080/00220389908422619>.

¹³ Breman, *Footloose Labour*.

¹⁴ Abdur Raftique, Deepina Massey, and Ben Rogaly, *Migration for Hard Work: A Reluctant Livelihood Strategy for Poor Households in West Bengal, India*, Working Paper T17, (Brighton: Development Research Centre on Migration, Globalisation and Poverty, University of Sussex, 2006).

¹⁵ Stephen Castles, "Development and Migration or Migration and Development: What Comes First?" *Asian and Pacific Migration Journal* 18, no.4 (2009):

migration was considered as an anomaly which needs to be cured. A substantial body of development research and policymaking today focuses on the potential benefits of international migration for developing countries, particularly on the resources that are sent by migrants to their families or communities at home. Income from migration stimulates economic activity, both directly and indirectly, and that it leads to significantly higher levels of employment, investment, and income.¹⁶ In countries of origin like India migrants are being re-defined as 'heroes of development'.¹⁷ Finally, it needs pointing out that even very small amounts of remittances can be vital for poor people, including their food security.

Migration as Intrinsic to Development

Haas (2010) argues that migration is intrinsic to development and is not a problem to be solved. He classifies the countries with the HDI into five categories and observes the immigration and emigration patterns in these countries. He observes that immigration steadily increases with the level of development of the countries; the more developed the country is, the more attractive it becomes as a destination for migrants. On the other hand, emigration increases at initial levels of development, and comes down after the countries have reached a certain level of development. Hence, as poor countries develop, the emigration increases. The logical explanation should be that as the country develops, the capabilities and aspirations of the people also rises; they become aware of the opportunities in other part of the world due to increase in access to information and exposure to modern media; at lower levels of development, people simply would not have enough money or other resources to migrate over long distances, or rather they might not have the necessary qualifications which would enable them to get visas, which improves with the levels

441, <https://doi.org/10.1177/011719680901800401>.

16 George Durand, William Kandel, Emilio A. Parrado and Douglas S. Massey, "International Migration and Development in Mexican Communities", *Demography* 33, no.2 (1996): 249, <http://www.jstor.org/stable/2061875>.

17 Binod Khadria, "India: Skilled Migration to Developed Countries, Labour Migration to the Gulf" in *Migration and Development: Perspectives from South*, ed. Stephen Castles and Raul Delgado Wise (Geneva: International Organisation for Migration, 2008), 79.

of income and education.¹⁸ While aforementioned theory was developed in the context of international migration, the same could be adapted and applied to internal migration as well, especially in the case of long distance migration. To word it differently, we can say that uneven development begets migration. At lower levels of income, people migrate to shorter distances; when communication, information and transportation improve, the people tend to move longer distances. Again, migration is not a product of one factor alone, but multiple factors contribute to the process of development and migration.

MIGRATION BEGETS MIGRATION

Migration can also contribute to the socio-economic integration of regions, thus positively contributing to the development of regions. In a paper titled, "Currents and eddies": Indian-Middle East Migration Processes¹⁹, Raman (2012) calls for a rethinking of existing theoretical notions in terms of dependency and development. This paper explores the nested complexities of the migration processes between India and the Middle East, and within India, from the regional perspective of Kerala. He argues that the core-periphery or enclave-hinterland relation cannot be seen as homogeneous. What appears to be core to one community might appear to be periphery to another; in fact, there exists a series of 'peripheries within peripheries'.

Migration from one region triggers flow of people, from neighbouring sub national states, which enter in to occupy the niche vacated by the out migrants, hence purchasing a sense of exclusion or inclusion for themselves.²⁰ According to Raman (2012) the remittances and other contributions made by the out migrants helps in development of the sending region which in turn helps the people from neighbouring regions to come out of their subservient existence, thereby socially and economically integrating the regions. Some theories conjecture that the impact of migration on natives in the receiving country is

18 Hein De Haas, "Migration and Development: A Theoretical Perspective", *International Migration Review* 44, no.1 (2010): 227, 10.1111/j.1747-7379.2009.00804.x.

19 K. Ravi Raman, "Currents and Eddies": Indian Middle East Migration Processes", *Cambridge Journal of Regions, Economy and Society* 5, no.2, (2012): 189, <https://doi.org/10.1093/cjres/rss003>

20 *Ibid*.

likely to be small because immigrants take (or are forced to take) jobs that natives refuse to accept.²¹ We can observe dual patterns of migration where certain regions intake considerable number of migrants, while at the same time send out-migrants to other regions – Punjab and Kerala are best examples. Even at the mayhem of Green Revolution, we could see huge out migration from Punjab. Similarly, Kerala, which is known for its Gulf migration is also home to a large number of internal migrants from Northern and North-eastern states (apart from migrants from neighbouring states like Tamil Nadu and Karnataka). One explanation could be based on the increasing ‘capabilities and aspirations’ with the increase in opportunities. Thus, with the variation in the capabilities of individuals in regions of uneven development, a chain of migration is formulated within which the core, periphery and peripheries of periphery can be clearly demarcated. The chain of migration is so formed depending on the degrees of development or distress. Another explanation could be based on the long traditions of migration; people follow patterns of migration. The Gulf migration from Punjab and Kerala or migrations from Bihar to Calcutta and Punjab might have its own immediate reasons, but it is also a continuation of a tradition of migration. Migration itself and segmentation of migration streams are often determined by historical antecedents.²²

This view also supports the social capital theory of migration.

Social Capital Theory of Migration

Migrant networks are an important form of social capital which triggers the process of migration. Migrant networks are sets of interpersonal ties that link migrants, former migrants, and non-migrants in origin and destination areas by ties of kinship, friendship, and shared

community origin.²³ Thieme (2006) in her work argues how migration has become an important livelihood strategy for the Nepali migrants in Delhi, with “a longstanding tradition with well-oiled networks” between villages in Nepal and places in India.²⁴ According to Thieme, different kinds of capital (human, financial, natural, physical, symbolic and social) are used during “the whole migration process, access to jobs, remittance transfer and management of financial needs”.²⁵ The importance of migrant networks as a credit facilitation and critical support infrastructure is tremendous. International migration expands until network connections, or social capital are wide enough that all people who wish to migrate to that country can do so without difficulties.²⁶

Barik (1987) examines the migration of Oriya workers to Surat textile factories observes that 90% of the workers belong to the same district, Ganjam and 60% of them belong to the same administrative division, and several of them belong to the same village.²⁷ The author who scrutinizes the reason behind such kind of concentration of workers from the same area emphasizes the role of contacts in the migration. Migrants almost always come from some areas and belong to some communities and not others. It can be said that seldom would a voluntary migrant choose a blind destination; there is almost always some preparation, consultation and correspondence, and almost always someone waiting for the migrant at the other end of the railway line or air route. ‘Contacts’ largely determine who comes to a city, what sort of jobs he would do, where he would reside and what kind of association he would develop. Thus, contacts also explain the spatial concentration of the

23 Douglas S. Massey, “Social Structure, Household Strategies and Cumulative Causation of Migration”, *Population Index* 56, no. 1 (1990): 3, <http://www.jstor.org/stable/3644186>.

21 Michael J. Piore, *Birds of Passage: Migrant Labour and Industrial Societies*, (New York: Cambridge University Press, 1979) quoted in George

J. Borjas, “Economic Theory and International Migration”, *International Migration Review* 23, no. 3, (1989): 457, www.jstor.org/stable/2546424.

22 Christopher Mc Dowell and Arian De Haan, “Migration and Sustainable Livelihoods: A Critical Review of the Literature”, (IDS Working Paper 65, Institute of Development Studies, 1997), <https://www.ids.ac.uk/files/dmfil/Wp65.pdf>.

24 Susan Thiem, *Social Networks and Migration: Far West Nepalese Labour Migrants in Delhi*, (Munster: LIT Verlag, 2006), 89.

25 *Ibid.*

26 Abdul Rahim, *Canadian Immigration and South Asian Immigrants*, (Bloomington: Xlibris Corporation, 2014), 29.

27 Bishnu C. Barik, “Unorganised Migrant Labour in the Textile Industry of Surat - A Case Study.” in *Migrant Labour and Related Issues*, ed. Vidyut Joshi, (New Delhi, Oxford and IBH, 1987).

migration of a particular type in certain areas of the city, leading to the formation of ghettos and all the problems that follow from it.²⁸ Bakewell & Jolivet, (2015) expands on the social network paradigm to explain the role of feedback processes – the social experiences that link migration experiences across time and space. The migration narratives disseminated through publicly visible examples- in migrant's houses, clothes, cars, or changed attitudes and behaviours – all of which contributes in shaping attitudes to migration, aspirations and decision making.²⁹

Post Migration – Adaptation, Alienation and Exclusion/Inclusion

The early theories of immigration assumed that the migrants who left their place of origin go on to settle in the place of destination and assimilate to the ways and means of the new land. The conception of 'melting pot' (cultural assimilation/ acculturation) was used to understand the Great Migration of people to United States of people belonging to different regions, race and culture, who assimilate into the single American identity.³⁰ But later immigration theories made the distinction by emphasising on 'ethnicity', say, how the immigrants preserved their identity by holding on to their traditions and practices. The degree of assimilation and exceptionalism depends on the particular contexts of migration.

Migration is conventionally studied as two separate sets of processes, operating at the places of departure on the one hand and arrival on the other. Migrants do not simply start a new life as an immigrant, but frequently maintain strong linkages with their place of origin. These

linkages are social, cultural, economic, institutional and emotional.³¹ These linkages have huge transformatory potential in migrant lives and the sending and receiving regions, due to constant accumulation and exchange of human capital- social, economic and cultural. The accumulation of economic capital even by working in subservient forms of labour in the place of destination can lead to creation of considerable social and cultural capital in place of origin. Often the status as a migrant itself can lead to valuation/ devaluation of cultural capital in home state.³² The exchange of cultural capital occurs in the form of food habits, festivals, and in the general improvement in the standard of life.

Reaction to migration is also often not uniform; with blue collar migration always come the fear of cultural erosion. Many a times, migrant labourer easily becomes part of the economic system with the host state acknowledging the need for migrants to perform subservient jobs; but consciously kept outside the social and cultural ecosystem in defence of cultural purity. Even in highly developed countries, masses of people moving from the poor south and turbulent east are seen as somebody who takes away jobs, pushes up housing prizes and overloads social services. Immigrants are increasingly blamed for crime, disease and unemployment.³³ Migrants are not treated uniformly in the place of destination; the treatment meted out to each class of migrants differs depending on the varying cultural and social capital embodied within him. Kelly and Lusis (2006) have tried to explain this phenomenon using Pierre Bourdieu's notion of 'habitus'. Labour is increasingly seen as a commodity, as a factor of production. "Migrant labourer comes to sell his labour power where there is labour shortage. He is admitted to do a certain kind of job. He had no rights, claims, or reality outside his filling of that job. While he fills it, he is paid and accommodated. If he no longer does so, he is sent back to where he came from. It is not men who immigrate but machine-minders, sweepers, diggers, cement mixers, cleaners, drillers etc. This is the significance of temporary

31 Philip Kelly and John Lusis, "Migration and the Transnational Habitus: Evidence from Canada and the Philippines", *Environment and Planning A* 38 no.5 (2006).

32 *Ibid.*

33 Stephen Castles and Mark J. Miller, *The Age of Migration: International Population Movements in the Modern World*, 4th edn, (Basingstoke: Palgrave Macmillan, 2009).

28 Biplob Dasgupta, "Fighting for Migrant Labourers", *Economic and Political Weekly* 23 no.36, (1988):1843.

29 Oliver Bakewell and Dominique Jolivet, "Broadcast Feedback as Causal Mechanisms for Migration." IMI Working Paper 113, (Oxford: International Migration Institute, 2015).

30 The melting pot theory has been used to describe societies that are formed by an assortment of immigrant cultures that eventually produce new hybrid social and cultural forms. The melting pot theory holds that, like metals melted together at great heat, the melting together of several cultures will produce a new compound, one that has great strength and other combined advantages. *The Encyclopedia of Global Human Migration*.

migration.³⁴ The preference for migrant labourers is often part of the strategy resorted to by the employers to command pliable and vulnerable labour, which by their status as aliens and transients, have forfeited their bargaining power.³⁵ Migrant labourers often face an identity crisis at this juncture; while they are well integrated into the host economy, not so much into the host culture or society. Many writers have written about how migrants are increasingly seen as "others" in the host states.

CONCLUSION

Migration is often perceived as a product of economic distress, leaving apart the forced migrations due to ethnic cleansing, political instability or persecution. Even in the contexts where the underlying reason for migration is economic in nature, it is the associated social and cultural factors that make the migration possible. Migration, as a product of uneven development of regions, is a reality that the world is confronting today. While the fact of migration is accepted, the migrants in the place of destination are often subjected to discrimination, exploitation or alienation. The policies of the governments shall focus on upholding the dignity of migrant as an individual and to prevent discriminatory treatment of migrants. Each migration experience is distinct in its own way, depending on particular contexts of the individual, his networks, the source and destination of migration. While migration has the potential for development, migration also produces concomitant unrest in the places of origin and destination. Hence, migration cannot be a prescription for development though it may provide a temporary respite for inequality. In the long term, regional inequalities should be extinguished through sincere developmental efforts.

REFERENCES

1. Berger, John and Jean Mohr. *Another Way of Telling*. London: Granta Books, 1989.
2. Borjas, George, J. "Economic Theory and International Migration", *International Migration Review* 23, no.3, (1989): 457-485. www.jstor.org/stable/2546424.
3. Castles, Stephen and Mark J. Miller. *The Age of Migration: International Population Movements in the Modern World*. 4th edn, Basingstoke: Palgrave Macmillan, 2009.
4. Castles, Stephen. "Development and Migration or Migration and Development: What Comes First?" *Asian and Pacific Migration Journal* 18, no.4 (2009): 441-471. <https://doi.org/10.1177/011719680901800401>.
5. De Haan, Arijan. "Livelihoods and Poverty: The Role of Migration – A Critical Review of the Migration Literature". *Journal of Development Studies* 36 no.2 (1999): 1-47. <https://doi.org/10.1080/00220389908422619>.
6. Durand, George., William Kandel, Emilio A. Parrado and Douglas S. Massey, "International Migration and Development in Mexican Communities", *Demography* 33, no.2 (1996): 249-264. <http://www.jstor.org/stable/2061875>.
7. Everett S. Lee. "A Theory of Migration". *Demography* 3 no.1 (1966): 47-57. <http://www.jstor.org/stable/2060063>.
8. Haan, A. d. 1999. "Livelihoods and Poverty: The Role of Migration" A Critical Review of the Migration Literature". *The Journal of Development Studies* 36 no.2 (1999): 1-47. <https://doi.org/10.1080/00220389908422619>.
9. Haas, Hein De. "Migration and Development: A Theoretical Perspective", *International Migration Review* 44, no.1 (2010): 227-264. doi:10.1111/j.1747-7379.2009.00804.x.
10. Harris, John R. and Michael Todaro. "Migration, Unemployment and Development: A Two-sector Analysis", *American Economic Review* 60 no.1 (1970): 126-142. <http://www.jstor.org/stable/1807860>.
11. Hear, Nicholas Van. "Theories of Migration and Social Change." *Journal of Ethnic and Migration Studies* 36, no.10, (2010): 1531-1536. <https://doi.org/10.1080/1369183X.2010.489359>.
12. Khadria, Binod. "India: Skilled Migration to Developed Countries, Labour Migration to the Gulf" In *Migration and Development: Perspectives from South*, edited by, Stephen Castles and Raul Delgado Wise, 79-112. Geneva: International Organisation for Migration, 2008.
13. Massey, Douglas S., Joaquin Arango, Graeme Hugo, Ali Koussouci, Adela Pellegrino and J. Edward Taylor. "Theories of International Migration: A Review and Appraisal". *Population and Development Review* 19 (1993): 431-466.
14. McDowell, Christopher and Arian De Haan. "Migration and Sustainable Livelihoods: A Critical Review of the Literature". IDS Working Paper 65, Institute of Development Studies, 1997. <https://www.ids.ac.uk/files/dmfile/Wp65.pdf>.
15. Piore, Michael, J. *Birds of Passage: Migrant Labour and Industrial Societies*, New York: Cambridge University Press, 1979.
34. John Berger and Jean Mohr. *Another Way of Telling*. (London: Granta Books, 1989).
35. Brenman, *Footloose Labour*.

16. Rafique, Abdur, Deeptima Massey, and Ben Rogaly. *Migration for Hard Work: A Reluctant Livelihood Strategy for Poor Households in West Bengal, India*. Working Paper T17, Brighton: Development Research Centre on Migration, Globalisation and Poverty, University of Sussex, 2006.
17. Rahim, Abdul. *Canadian Immigration and South Asian Immigrants*. Bloomington: Xilbris Corporation, 2014.
18. Raman, Ravi K. "Currents and Eddies": Indian Middle East Migration Processes", *Cambridge Journal of Regions, Economy and Society* 5, no.2, (2012): 189-246. <https://doi.org/10.1093/cjres/rss003>.
19. Stark, Oded. *The Migration of Labour*. Cambridge: Basil Blackwell, 1991.
20. Thieme, Susan. *Social Networks and Migration: Far West Nepalese Labour Migrants in Delhi*. Munster: LIT Verlag, 2005.
21. Todaro, Michel C. and Stephen C. Smith. *Economic Development*. Boston: Pearson Education, 2012.

2

Migration Patterns and Identity Formation: Perspective from Mappila Engagements in Colonial-Malabar, India

Noushad M. K.*

ABSTRACT

The present study tries to analyse the changing social and cultural interaction of Mappila Muslims of Malabar during colonial period. The Mappila Muslim community of Kerala is such an ethnic community, their socio-cultural inclination with Arab migrants/diasporas gave a distinct shape to develop an idiosyncratic identity and uniqueness which developed from the frequent Arab engagements with the Malabar coast of South-West India since the early days before the European colonial interventions of Portuguese, Dutch, French and British. The paper addresses differential patterns of migration and identity formation among Muslims of Malabar during the British rule.

Keywords: Patterns of Migration, Identity Formation, Mappila, and Malabar Muslims.

INTRODUCTION

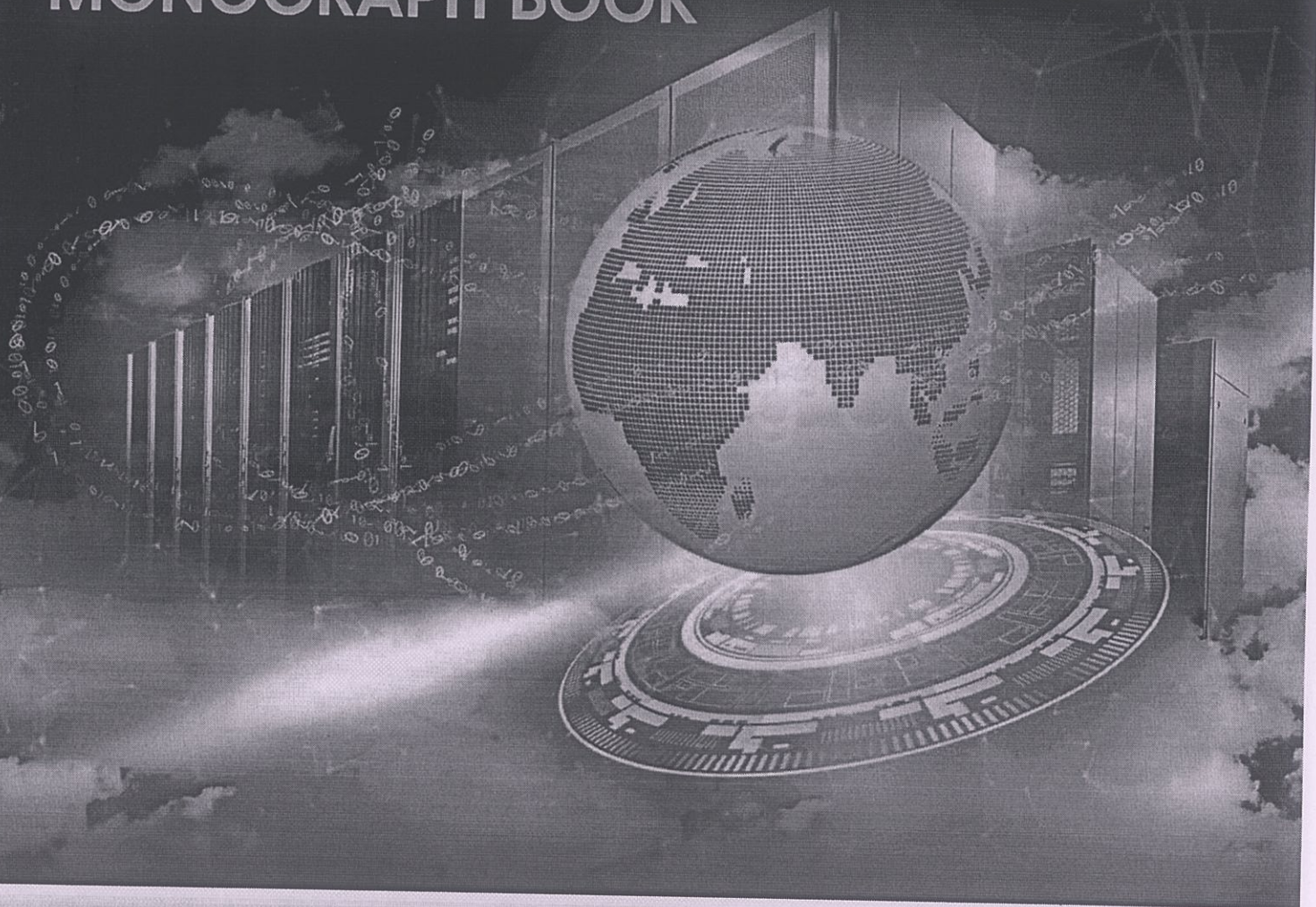
The process of migration induces changes in any society as it is constantly reinventing to produce and reproduce individuals and communities. The Mappila Muslim community of Kerala is such an ethnic community, their socio-cultural inclination with Arab migrants/

*Jawaharlal Nehru University, New Delhi.



Advancements in Global Business Research Across Emerging Countries

MONOGRAPH BOOK



**Mc
Graw
Hill**

Editor
Dr. Zafar U. Ahmed

Co-Editor
Dr. Sahil Raj

Contents

Sr No.	Title	Page No.
	<i>Introduction</i>	<i>iii</i>
	<i>Sponsors</i>	<i>iv</i>
	<i>Review Board</i>	<i>v</i>
	<i>Preface</i>	<i>vii</i>
	<i>Biopic of Editors</i>	<i>ix</i>
1.	Operating in a Virtual Optimum Currency Area (VOCA) as a Hedging Strategy <i>Omer F. Genc</i>	1–20
2.	Internationalization Strategies for Sustainable Growth of Small- and Medium-Sized Enterprises <i>Dr. Hanan El Basha, Dr. Osama Sam AL-KWIFI</i>	21–36
3.	The Food Cold Chain in Thailand – An Overview <i>Viput Ongsakul, Wirut Kaewpijit</i>	37–57
4.	Conceptualizing a New Model of Luxury Brand Purchase Intention in an Emerging Country Setting <i>Sumith S. De Silva, Eugene L. Seeley, Zafar U. Ahmed</i>	58–85
5.	The Role of Servicescape in Building Brand Love Mediated through Brand Experience: A Conceptual Framework from the Indian Hotel Industry <i>Dr. Debajani Sahoo, Achyut Telang, Zafar U. Ahmed</i>	86–102
6.	The Effect of Celebrity Endorsement on Customers' Attitudes, Emotional Value, and Purchase Intention Toward a Footwear Brand. The Successful Business Case of Son Tung MTP Endorsing Biti's in Vietnam. <i>Phuong Van Nguyen, Truc Thi Thanh Nguyen, Khoa T. Tran, Phuong Uyen Dinh</i>	103–122
7.	Using Deprivation Cost to Achieve Equitable Allocation of Scarce Resources in Emergency Operations <i>Maher Nouredine. Itani</i>	123–143
8.	A Multilevel Model of Organic Food Attributes that Influence Purchasing Intentions <i>Sheikh Ashiqurrahman Prince</i>	144–161
9.	Foreign Direct Investment: An Assessment of Attractiveness of Sri Lanka and Prerequisites <i>Anil Jayantha Fernando</i>	162–180
10.	Critical Success Factors (CSFs) of Public Private Partnership (PPP) In Toll Expressway Projects in Malaysia <i>Zainal Abidin Mohamed, Syaromi Ramli</i>	181–205
11.	Role of Service Quality in Patronage Behavior of Readers in Sri Lanka: A Conceptual Analysis <i>Kaththota Ralalage Niluka Harshani, Debajani Sahoo, Viput Ongsakul, Zafar U. Ahmed</i>	206–222

Sr No.	Title	Page No.
12.	Employees Training and Organizational Performance: Does Service Quality Mediate the Relationship? <i>Ibrahim Garba Muhammad, Haim Hilman</i>	223–244
13.	Mediating Effect of Customer Awareness on Relation between Eco-labelling and Competitive Advantage Among Small and Medium Enterprises in Kenya <i>Dr. Evaline Jerotich Bartocho, Dr. Emmanuel Kibet Tanui</i>	245–263
14.	Impact of Macroeconomic Indicators on UAE Financial Market: Case Study of Dubai Financial Market (DFM) <i>Dr. Mohammed Naim Chaker, Ariba Sabah</i>	264–278
15.	Dynamics of Customer Friendly and Satisfactory Ordering System at Coffee Joints Across South India <i>Vazeerjan Begum</i>	279–293
16.	Replicating the Malaysian Model of Building World-Class Universities Across Yemen <i>Basheer Al-Haimi, Daing Nasir Ibrahim, Mohd Rashid Bin Ab Hamid</i>	294–312
17.	Developing Performance Measurement of Supply Chain Management using SCOR Model and Analytical Hierarchy Process: A Case of National Automotive Exhibition in Indonesia <i>Indrianawati Usman, Muhammad Fariz</i>	313–330
18.	Policy Issues in Education Reforms and Expected Outcome in Thailand <i>Prakaydao Krissadee</i>	331–347
19.	Islam and Organizational Behavior: Conceptual Foundations and Empirical Evidence from the Banking Sector of the UAE <i>Syed Aziz Anwar, Nabil Baydoun, Aminu Mamman</i>	348–366
20.	Green Tourism Strategy: An Indonesian Perspective in Eco-Tourism <i>Mahrinasari MS, Satria Bangsawan</i>	367–393
21.	Efficacy of Reward Strategy on Employee Retention: A Case of Commercial Banks in Eldoret Town, Kenya <i>Joel Chepkwony, Ronald Bonuke, Grace Orinda</i>	394–420
22.	Interrelationships among the Institutional Enablers of National Innovation System <i>Shiwangi Singh, Sanjay Dhir, Dr. V Mukunda Das, Anuj Sharma</i>	421–441
23.	Changing the Experience of Flying: Vistara – The New Kid on the Block! <i>Kevin Savaille</i>	442–464
24.	Strategic Flexibility and Innovation of an Organisation using Electric Circuit Framework – SAP-LAP Analysis <i>Shivang Baijal, Sanjay Dhir</i>	465–487
25.	Examine the Impact of Attendees' Team/Event Image on their Attitudinal and Behavioral Intentions <i>Jaskirat Singh, Apar Singh</i>	488–507
26.	Impact of Inter-Partner Dynamics on the Performance of IJVs: A Meta-Analytical Review <i>Ishita Batra, Megha Gupta, Sanjay Dhir</i>	508–524

Sr No.	Title	Page No.
27.	Customer Satisfaction Towards M-commerce: Identification of Key Attributes in Comparison with E-commerce <i>Arshan Bhullar, Pushpinder Singh Gill</i>	525–547
28.	Content Analysis of Online Hotel Reviews <i>Tanveer Kajla, Sahil Raj, Shivinder Kaur, Simi Bajaj</i>	548–562
29.	Accelerating Product Popularity via Dynamics of Social Media: A case on Sleepy Owl Coffee – An Innovative Make-In-India Cold Brew Coffee Start-up <i>Taleha Khan</i>	563–581
30.	Strategic Thinking of CEO's and Its Impact on the Firm Performance: A System Dynamics Approach in Indian Automobile Industry <i>Aqueeb Sohail Shaik, Sanjay Dhir</i>	582–600

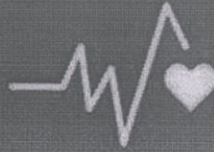
ROUTLEDGE



ROUTLEDGE
HANDBOOKS

3

GOOD HEALTH
AND WELL-BEING



28

SUSTAINABLE
DEVELOPMENT
GOALS



a GlassHouse book

The Routledge Handbook of International Development, Mental Health and Wellbeing

Edited by Laura Davidson

CONTENTS

<i>List of figures and tables</i>	<i>xi</i>
<i>List of contributors</i>	<i>xii</i>
<i>Foreword: The New UN Health Agenda</i> Jeffrey D. Sachs	<i>xvii</i>
 PART I	
The global imperative	1
1 The global mental health imperative and the role of the World Health Organization within the UN 2030 Agenda <i>Shekhar Saxena and Laura Davidson</i>	3
2 The rights to mental health and development <i>Lawrence O. Gostin and Laura Davidson</i>	21
 PART II	
Economic perspectives	43
3 Meeting SDG3: The role of economics in mental health policy <i>Martin Knapp and Valentina Iemmi</i>	45
4 The relationship between mental health and poverty in low- and middle-income countries <i>Judith Bass</i>	58
5 Mental health and economic development in Vietnam <i>Chris Underhill, Victoria K. Ngo, and Tam Nguyen</i>	69

Contents

6	Social entrepreneurship and systems thinking about mental illness in low- and middle-income countries <i>Sean A. Kidd and Kwame McKenzie</i>	81
PART III		
	Demographic and cultural perspectives	95
7	Understanding traditional and other culture-based approaches to mental illness in lower- and middle-income contexts <i>Joseph D. Calabrese</i>	97
8	Addressing mental health from a gender perspective: Challenges and opportunities in meeting SDG3 <i>Carol Vlassoff</i>	109
9	Men's mental health and wellbeing: The global challenge <i>Svend Aage Madsen</i>	128
10	The mental health and wellbeing of migrants in the context of the 2030 Sustainable Development Agenda <i>Guglielmo Schininà and Karoline Popp</i>	138
11	The Sustainable Development Goals and child and adolescent mental health in low- and middle-income countries <i>Cornelius Ani and Olayinka Omigbodun</i>	152
12	The global challenge of mental health and ageing, and scalable innovations in mental health services for older adults <i>Stephen J. Bartels</i>	171
PART IV		
	Policy	185
13	Strengthening government policy to achieve Target 3.4 of SDG3 <i>Rachel Jenkins</i>	187
14	Mental health, disability rights, and equal access to employment: Global challenges in light of the Sustainable Development Goals <i>Aart Hendriks</i>	208

Contents

15	Prioritising rights-based mental health care in the 2030 Agenda <i>Dainius Pūras and Julie Hannah</i>	222
16	Natural and humanitarian disasters, and mental health: Lessons from Haiti <i>Giuseppe Raviola</i>	235
17	Paradigm shift: Treatment alternatives to psychiatric drugs, with particular reference to low- and middle-income countries <i>Peter Lehmann</i>	251
PART V		
	Legal perspectives	271
18	Mental disability, the European Convention on Human Rights and Fundamental Rights and Freedoms, and the Sustainable Development Goals <i>Peter Bartlett</i>	273
19	The Sustainable Development Goals, psychosocial disability, and the meaning of wellbeing in SDG3: Towards an approach that combines the subjective and objective <i>David Bilchitz</i>	291
20	International monitoring and enforcement mechanisms for human rights violations in the global mental health context <i>Laura Davidson</i>	305
21	The law as sword and shield: Realising the rights of those with psychosocial disability through international, regional, and national complaints systems <i>Laura Davidson</i>	331
PART VI		
	Country perspectives	359
22	A case study: Colombia, conflict, and the peace process, from a user-perspective <i>Salam A. Gómez</i>	361

Contents

23	Legislating on mental health in India to achieve SDG3 <i>Amita Dhandu</i>	373
24	Breaking the restraints: Civil society's struggle to abolish human rights violations in Israel's psychiatric system <i>Sharon Primor and Dahlia Vitzberg</i>	385
	<i>Afterword: Joining up for our future in global mental health</i> <i>Vikram Patel</i>	396
	<i>Index</i>	401

Judicial Review

Process, Powers, and Problems

Essays in honour of Upendra Baxi

Edited by

Salman Khurshid

Sidharth Luthra

Lokendra Malik

Shruti Bedi



CAMBRIDGE
UNIVERSITY PRESS

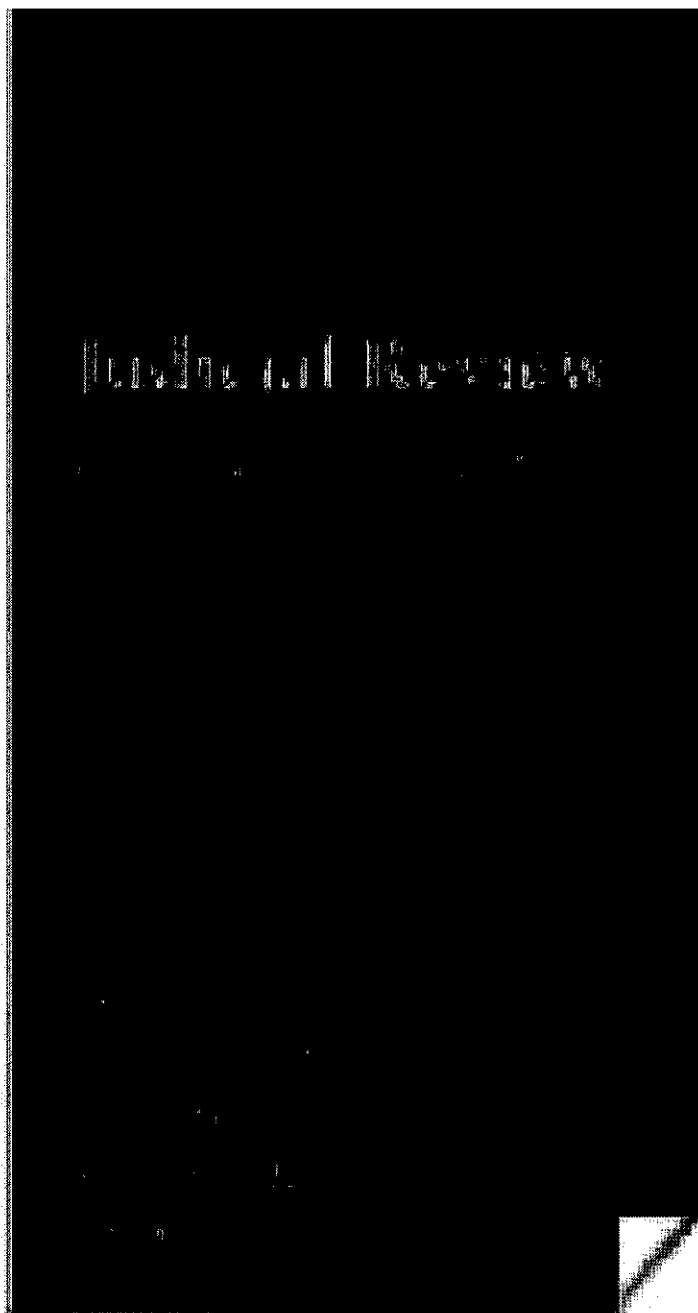
Contents

<i>Foreword</i>	vii
JUSTICE A. K. SIKRI	
<i>Editors' Note</i>	xxiii
SALMAN KHURSHID, SIDHARTH LUTHRA, LOKENDRA MALIK, AND SHRUTI BEDI	
Introduction	1
M. P. SINGH	
1. The Inadequacy of Judicial Enforcement of Constitutional Rights Provisions to Rectify Economic Inequality, and the Inevitability of the Attempt	13
MARK TUSHNET	
2. The Interplay of Law and Politics in India	27
JAMES MANOR	
3. Beating the Backlog: Reforms in Administration of Justice in India	46
ABHISHEK SINGHVI	
4. Judicial Review: Perspectives and Reflections for the Twenty-First Century	60
JOHN MCELDFOWNEY	
5. When 'Creeping Jurisdiction' Goes Awry: The Social Action Litigation to Ban Surrogacy	79
SITAL KALANTRY	
6. Judicial Review and the Democratic Judge	107
JOEL I. COLÓN-RÍOS	
7. Judicial Review: A Tool to Shape Constitutional Jurisprudence	127
BALRAM K. GUPTA	
8. The Baxian Bioscope on Indian Judicial Process	145
AMITA DHANDA	
9. Judicial Activism, Courts, and Constitutional Revolutions: The Israeli Case	163
YANIV ROZNAI AND GARY J. JACOBSON	

Contents

<i>Foreword</i>	vii
JUSTICE A. K. SIKRI	
<i>Editors' Note</i>	xxiii
SALMAN KHURSHID, SIDHARTH LUTHRA, LOKENDRA MALIK, AND SHRUTI BEDI	
Introduction	1
M. P. SINGH	
1. The Inadequacy of Judicial Enforcement of Constitutional Rights Provisions to Rectify Economic Inequality, and the Inevitability of the Attempt	13
MARK TUSHNET	
2. The Interplay of Law and Politics in India	27
JAMES MANOR	
3. Beating the Backlog: Reforms in Administration of Justice in India	46
ABHISHEK SINGHVI	
4. Judicial Review: Perspectives and Reflections for the Twenty-First Century	60
JOHN MCELDFOWNEY	
5. When 'Creeping Jurisdiction' Goes Awry: The Social Action Litigation to Ban Surrogacy	79
SITAL KALANTRY	
6. Judicial Review and the Democratic Judge	107
JOEL I. COLÓN-RÍOS	
7. Judicial Review: A Tool to Shape Constitutional Jurisprudence	127
BALRAM K. GUPTA	
8. The Baxian Bioscope on Indian Judicial Process	145
AMITA DHANDA	
9. Judicial Activism, Courts, and Constitutional Revolutions: The Israeli Case	163
YANIV ROZNAI AND GARY J. JACOBSON	

10. Democracy, Constitution, and Judicial Review: A Critique VIJENDER KUMAR AND V. P. TIWARI	188
11. A Minor Jurisprudence of Pathos: Upendra Baxi as Teacher and Writer OISHIK SIRCAR	202
12. The Need for Reinventing the Supreme Court as a Constitutional Court SIDHARTH LUTHRA AND NIVEDITA MUKHIJA	225
13. Appointment of 'Distinguished Jurists' as Judges in the Supreme Court of India: A Critical Analysis LOKENDRA MALIK	236
14. Judicial Dissent and Judicial Review: A Functional Analysis YOGESH PRATAP SINGH	252
15. The Power of Judicial Review: Judicial Chutzpah or Judicial Desideratum SHRUTI BEDI	277
16. Judicial Review of Legislations by Tribunals in India: Law, Problems, and Perspectives P. PUNEETH	293
17. Criminalization of Membership of Terrorist Organizations in India and the United States of America: Human Rights Concerns ANURAG DEEP	315
18. Article 142 of the Indian Constitution: On the Thin Line between Judicial Activism and Restraint R. HARI KRISHNAN AND ANURAG BHASKAR	341
19. Sketching the Limits of Article 142 of the Constitution of India: A Constitutional Necessity SHAILENDRA KUMAR	365
20. Constitutional Morality and Judges of the Supreme Court SALMAN KHURSHID	384
<i>About the Contributors</i>	411
<i>Index</i>	413



30

Acc. No. 023075

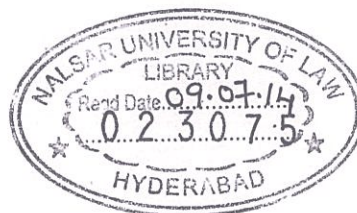
K S N Murthy and K V S Sarma

**Modern
Law of Insurance
in India**

Fifth Edition

Dr K V S Sarma

*B Com, ML, PhD
Professor, NALSAR University of Law, Hyderabad*



 LexisNexis®

Contents

<i>Dedication</i>	<i>v</i>
<i>Preface to the Fifth Edition</i>	<i>vii</i>
<i>Preface to the Fourth Edition</i>	<i>ix</i>
<i>Preface to the Third Edition</i>	<i>x</i>
<i>Foreword to the First Edition</i>	<i>xi</i>
<i>Table of Cases</i>	<i>xix</i>

Part I—General Principles of the Law of Insurance

Chapter 1—Introduction	3
Nature of Insurance	3
History of Insurance	4
Era of Privatisation	9
Chapter 2—The Insurance Regulatory and Development Authority	10
Introduction	10
The Insurance Regulatory and Development Authority Act 1999	12
Chapter 3—Registration of Insurance Companies	17
Introduction	17
Procedure of Registration	18
Renewal of Registration	21
Chapter 4—Other Regulations	21
Introduction	21
Registration of Meetings	21
Appointed Actuaries and Actuarial Report	22
Assets and Liabilities	23
Solvency Margin	23
Preparation of financial statements	24
Audit Report	25
Investment	26
Rural Insurance	26
Re-insurance	27
Advertisement and Disclosures	28
Chapter 5—Contract of Insurance	28
Definition	29
Classification of Contracts of Insurance	29
Nature of the Insurance Contract	31

Chapter 6—Insurable Interest	43
Definition	43
Nature of Insurable Interest	45
Time or Duration of Interest	45
Insurable Interest and Life Insurance	46
Insurable Interest and Fire Insurance	49
Chapter 7—Premium	53
Definition	53
The Mode or Method of Payment	55
Days of Grace	56
Forfeiture	57
The Return of the Premium	60
Chapter 8—The Risk	67
Meaning of Risk	67
Scope of Risk	67
Application of Rule in the various Classes of Insurance	72
The Risk and the Duty of the Assured	74
The Elements of Risk	76
The Alteration of the Risk	76
Chapter 9—Assignment of the Insurance Policy	79
Nature and Manner of Assignment	79
Assignment of Life Policies	80
Assignment of Fire Policies	85
Assignment of Marine Policy	87
Chapter 10—Warranties and Disclosures	90
Meaning of Warranty	90
Form of Warranty	91
Difference Between a Warranty and a Representation	91
The Effect of Breach of Warranty	93
Character of Warranty	95
Waiver of Breach of Warranty	96
Kinds of Warranties	96
Chapter 11—Insurance Intermediaries	99
Insurance Agents	99
Indian Practice	99
Law of Agency	100
Appointment of an Agent	100
Agents in Law of Insurance	101
Licensing of Agents	101
Insurance Surveyors	102

Part II—Life Insurance

Chapter 12—Nature and Scope of Life Insurance	107
Definition	107
Difference Between Life Insurance and Other Insurances	108
Kinds of Life Insurance	108
The Policy	110
Formation of a Life Insurance Contract	112
Chapter 13—Event Insured Against in Life Insurance	124
Extent Insured	124
Chapter 14—Circumstances Affecting the Risk	131
Matters Affecting the Risk	131
Section 45 of the Insurance Act	134
Chapter 15—Amounts Recoverable Under Life Policy	137
Amount Recoverable	137
Automatic Extension Clause	138
Chapter 16—Persons Entitled to Payment	141
Persons Entitled	141
Chapter 17—Settlement of Claim and Payment of Money	153
Liability of the Insurer to Pay	153
Claim by Maturity	153
Claim on Death	154

Part III—Fire Insurance

Chapter 18—The Definition, Nature and Scope of Fire Insurance	161
Definition of Fire Insurance	161
Nature of Fire Insurance Contract	164
Policy	168
Scope of the Policy	170
Chapter 19—The Meaning of the Terms 'Fire' and 'Loss by Fire'	174
Meaning of Fire	174
Loss by Fire	175
Chapter 20—The Amount Recoverable by the Assured	178
Amount Recoverable	178
Chapter 21—Special Doctrines	184
Doctrine of Reinstatement	184
Doctrine of Subrogation	187
Doctrine of Contribution	189
Differences Between the Doctrines of Contribution and Subrogation	190

Part IV—Marine Insurance

Chapter 22—Nature and Scope of Marine Insurance Contract	193
Nature of the Contract	193
The Marine Adventure	193
A Slip in Marine Insurance	195
Rules in India Regarding Marine Insurance	196
Chapter 23—Classification of Marine Policies	198
~~Kinds of Policies~~	198
Chapter 24—~~Voyage—Deviation~~	203
Voyage	203
Change of Voyage	205
Deviation	205
Chapter 25—~~The Perils of the Sea~~	209
Definition	209
Excluded Losses	211
Other Perils Insured in a Marine Policy	213
Chapter 26—Warranties in Marine Insurance	216
Nature and Definition of Warranty	216
Effect of Breach of a Warranty	217
Warranties Dealt with Under the Act	217
~~Implied Warranties~~	217
No Implied Warranty	221
Chapter 27—~~Loss~~	222
Preliminary	222
Kinds of Losses	222

Part V—Miscellaneous or Liability Insurance

Chapter 28—Nature and Scope of Miscellaneous Insurance	235
Nature and Scope of Miscellaneous Insurance	235
Personal Accident Insurance	235
Property Insurance	236
Liability Insurance	237
Chapter 29—Motor Vehicle Insurance	242
Nature and Scope	242
Property Accident Aspect	242
Personal Accident Aspect	243
Chapter 30—Motor Vehicle Insurance Absolute or No Fault Liability	245
Introduction	245
Knock for Knock Agreements	245

Chapter 31—Third Party or Compulsory Insurance of Motor Vehicles	250
Nature and Scope	250
Effect of Insolvency or Death on Claims	261
Chapter 32—Claims Tribunal	265
Introduction	265
Constitution of the Claims Tribunals	266
Functions of the Tribunal	267
Application for Compensation	268
Procedure and Powers of the Claims Tribunal	268
Award of the Claims Tribunal	271
Chapter 33—Insurance Ombudsman	271
Introduction	271
Complaints	272
Duties and powers of Ombudsman	272
Award	273
Assessment of his Performance	274
Chapter 34—Policy Holder as Consumer	274
Preliminary	274
Object of the Act	274
Complaint of Policy Holders	275
Is a Policy Holder a Consumer	275
Who is a Consumer	278
Complaint	278
Reliefs	279
Tribunals	280
Bird's Eye View of the Rest of the Act	280
Provisions to achieve speedy disposal	281
Limitation	282
Chapter 35—Insurance Products: New Developments	282
I—Insurance in areas of high societal impact	286
II—Personal Safety Insurances	287
III—Market Conditions Driven Insurance Products	

Appendices

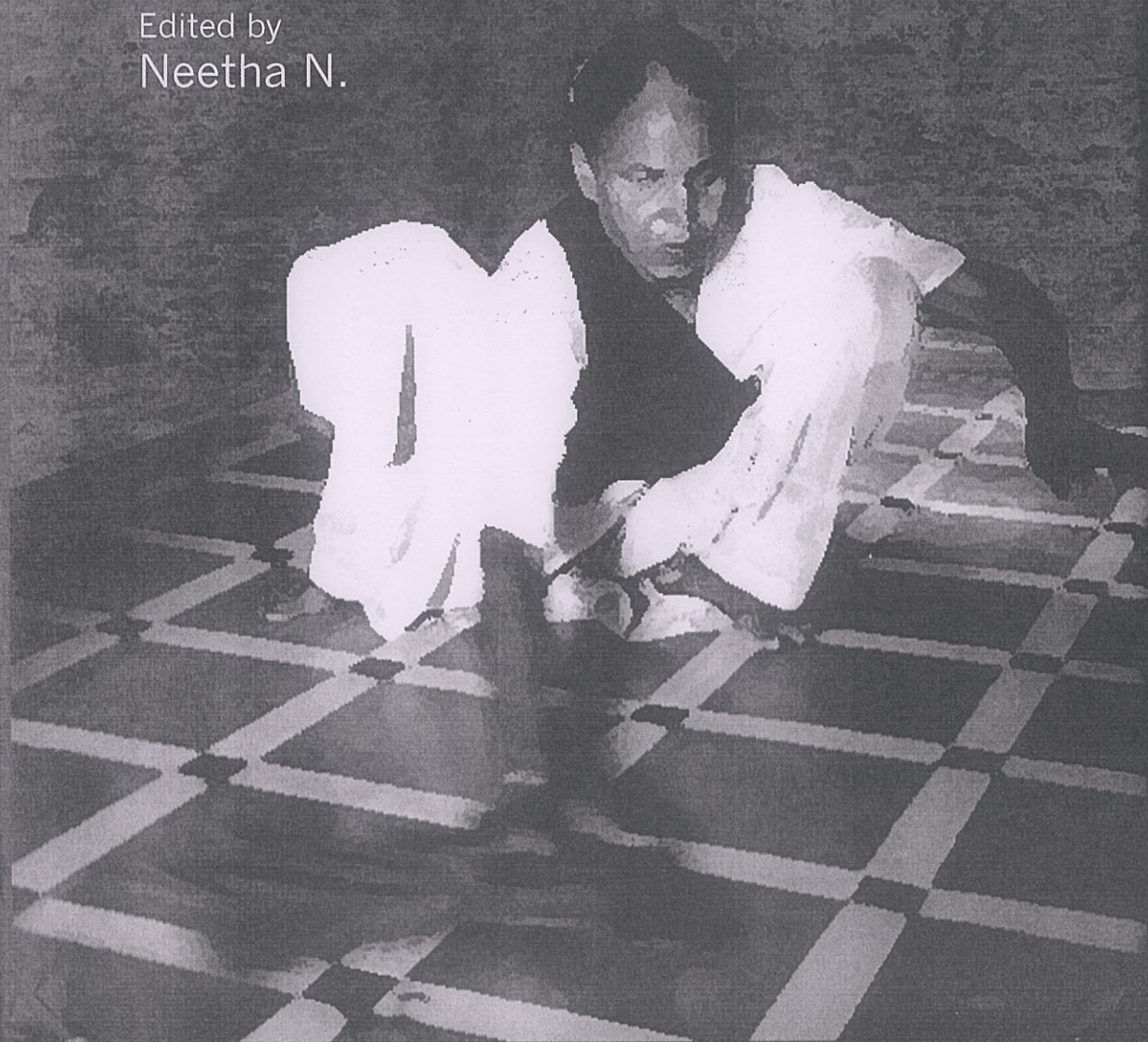
Appendix	
I. The Insurance Regulatory and Development Authority Act, 1999	293
II. Insurance Regulatory and Development Authority (Registration of Indian Insurance Companies) Regulations, 2000	301
III. Insurance Regulatory and Development Authority (Insurance Advertisements and Disclosure) Regulations, 2000	320

IV. Insurance Regulatory and Development Authority (Licensing of Insurance Agents) Regulations, 2000	325
V. Insurance Surveyors and Loss Assessors (Licensing, Professional Requirements and Code of Conduct) Regulations, 2000	336
VI. Insurance Regulatory and Development Authority (Appointed Actuary) Regulations, 2000	372
VII. Insurance Regulatory and Development Authority (Actuarial Report and Abstract) Regulations, 2000	378
VIII. Insurance Regulatory and Development Authority (Obligations of Insurers to Rural Social Sectors) Regulations, 2002	402
IX. Insurance Regulatory and Development Authority (Assets, Liabilities and Solvency Margin of Insurers) Regulations, 2000	406
X. Insurance Regulatory and Development Authority (Preparation of Financial Statements and Auditor's Report of Insurance Companies) Regulations, 2002	417
XI. Insurance Regulatory and Development Authority (Investment) Regulations, 2000	462
XII. Insurance Regulatory and Development Authority (Life Insurance-Reinsurance) Regulations, 2013	496
XIII. Insurance Regulatory and Development Authority (General Insurance - Reinsurance) Regulations, 2013	502
XIV. The Insurance (Amendment) Bill, 2008	505
XV. Financial Sector Legislative Reforms Commission	507
Index	511

Working at Others' Homes

The Specifics and Challenges
of Paid Domestic Work

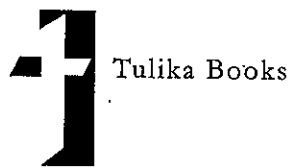
Edited by
Neetha N.



WORKING AT OTHERS' HOMES

**THE SPECIFICS AND CHALLENGES
OF PAID DOMESTIC WORK**

**Edited by
NEETHA N.**



Contents

List of Tables and Figures vii

Preface and Acknowledgements ix

- 1 Paid Domestic Work: Making Sense of the Jigsaw Puzzle
NEETHA N. 1
- 2 Spatial Dislocation and Occupational Domestication:
Paid Domestic Workers from a Resettlement Colony
in Chennai
KAREN COELHO 22
- 3 Bargaining over Wage: Part-time Domestic Workers
in Kolkata
NILANJANA SENGUPTA and SAMITA SEN 46
- 4 Locality-specific Norms for Wages and Bargaining:
'Part-time' Domestic Workers in the National
Capital Region
SHRADDHA JAIN and PRAVEENA KODOTH 66
- 5 Valuables Out-of-Place: How Domestic Workers
Negotiate Class Inequalities in Middle-Class Homes
SONAL SHARMA 95
- 6 Women in Care Work: Domestic Workers in a
Developing City of West Bengal
HEMANTIKA BASU 114

7 Children and Adolescent Girls as Domestic Workers in India: Causes and Consequences PREET RUSTAGI and SHIVANI SATIJA	138
8 The Lure of Informality: The <i>Kafala</i> System and Malayali Women's Negotiation of the Market for Paid Domestic Work in the Middle East PRAVEENA KODOTH	167
9 Domestic Work in the Households of Women Domestic Workers in Delhi NEHA WADHWA	189
10 Organizing Domestic Workers in Pune City KIRAN MOGHE	215
11 Towards Recognition through Professionalization: Organizing Domestic Workers in Kerala SONIA GEORGE	231
12 Extending Legal Protection to Domestic Workers VASANTHI NIMUSHAKAVI	250
13 Mirroring Devalued Housework? Minimum Wages for Domestic Work NEETHA N.	278
14 Domestic Work, Unpaid Work and Wage Rates KAMALA SANKARAN	298
<i>Contributors</i>	313

Tables and

2 Spatial Dislocation of Domestic Workers from

TABLE 2.1	Types of Occupation
TABLE 2.2	Age Distribution
TABLE 2.3	Educational Attainment
TABLE 2.4	Caste Profile
TABLE 2.5	Women Domestic Workers
TABLE 2.6	Job Location
TABLE 2.7	Occupational Segregation
TABLE 2.8	Reasons for Migration
TABLE 2.9	Previous Occupation

3 Bargaining Power of Domestic Workers

TABLE 3.1	Distribution of Domestic Workers
TABLE 3.2	Average Household Size
TABLE 3.3	Dispersion of Domestic Workers
TABLE 3.4	Correlation between Domestic Work and Household Size
FIGURE 3.1	Components of Domestic Work

4 Locality-Specific Characteristics of Domestic Workers

TABLE 4.1	Residence Location
TABLE 4.2	Distribution of Domestic Workers
TABLE 4.3	Distribution of Domestic Workers by Number of Jobs
TABLE 4.4	Wages per Hour
TABLE 4.5	Descriptive Statistics
TABLE 4.6	Descriptive Statistics

5 Valuable Outcomes of Domestic Work Inequalities in India

FIGURE 5.1	Screenshot of 'servant' verification process
------------	--

Extending Legal Protection to Domestic Workers

Vasanthi Nimushakavi

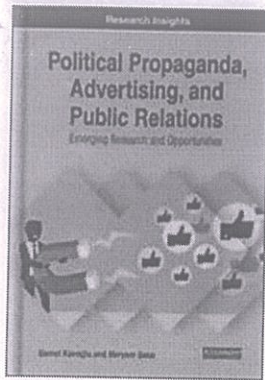
The Draft Code on Wages Bill 2017 introduced in the Lok Sabha in August 2017 brings the issue of a National Floor Level Minimum Wage (NFLMW) to the fore. The Code, prepared to take forward the recommendations of the Second National Commission on Labour of the simplification of the Central Labour Laws, is part of the attempt to codify all Central Labour Laws. It is part of the four codes prepared by the Ministry of Labour and Employment. The four codes cover all Central Labour Laws and sort them into codes on industrial relations, wages, social security and welfare and occupation safety, health and working conditions. It is hoped that the codification of central laws will begin to address some of the difficulties in enforcing labour laws in India particularly for the unorganized worker.

The Draft Code on Wages brings together the four existing laws on wages – the Minimum Wages Act 1948; the Payment of Wages Act 1936; the Payment of Bonus Act 1965; and the Equal Remuneration Act 1976. The new code, under Section 9, proposes a national minimum wage, which will form a floor-level wage; no state or central minimum wage may be fixed which is below such wage. Thus, although the draft retains the discretion to fix different wages for different areas, establishments or work by notification under section 6, it introduces a long-standing demand to fix a national floor-level wage. A consultative mechanism is provided before the national minimum wage is determined.

In October 2017, the Ministry of Labour and Employment sought inputs about a draft national policy for domestic workers. The draft proposes the inclusion of domestic workers in the existing labour legislations including legislations such as the Minimum Wages Act.

Extending legal protections to the informal sector workers has

(32) - 33



Understanding Indian Political Parties Through the Lens of Marketing Management: Towards a Conceptual Political Marketing Model

Pinaki Nandan Pattnaik (NALSAR University of Law, India) and Mahendra Kumar Shukla (NALSAR University of Law, India)

Source Title: Political Propaganda, Advertising, and Public Relations: Emerging Research and Opportunities (/book/political-propaganda-advertising-public-relations/233941)

Copyright: © 2020

Pages: 21

DOI: 10.4018/978-1-7998-1734-5.ch008

OnDemand PDF
Download:

\$29.50

() Available

[Current Special Offers](#)

Abstract

This chapter identifies and develops an understanding of various nuances and the synchrony between the concepts of marketing management and usage by political parties while electioneering. The chapter also evaluates various political marketing models and has developed a comprehensive model to better understand its applicability in an Indian context. It is based on substantial literature review to develop a holistic understanding of Political Marketing and Models of Political Marketing. A Case study of the Bharatiya Janata Party is used to evaluate the proposed model. This chapter adds insight from the Indian viewpoint on existing literature concerning political marketing models.

Chapter Preview

Top

Theoretical Background

Political Marketing plays a pivotal role in the strategies implemented by the political parties. It provides a complete skeleton for the political party when they approach the electorate. Political marketing would facilitate the political parties in understanding the electorate, creating effective communication channel during the few months prior to the elections and engage with the voters in a better way and finally implementing/delivering the designed campaign to the electorate. Political marketing also helps the candidates and the political parties to create campaigns and implement them according to the current trend in the election market. It also facilitates the parties and candidates to utilize the new technologies present in the marketing field and apply them in the campaigning activities of the party. Manshadi, M. (2017) refers to political marketing as an inter-disciplinary study. Goods which are produced in politics are power and via marketing, that power is presented in various classifications (promises) and politician signs (brand/mark) to a political market.

Beckham (2017) suggests political marketing, may, nonetheless, provide important benefits to citizens. It can provide information about candidates, parties, policies, motivate political participation, and promote accountability. But even as it may provide these goods, autonomous deliberation by citizens, both individually and with others, is circumscribed by the establishment of enduring schemes of political-information processing, presentation, transmission, and exchange produced by political marketing. According to Harrop (1990), political marketing is not just about the party's political broadcast, advertising and electoral speeches but covering the whole area of party positioning in the electoral market. According to Schafferer, C. (Ed.) (2017), in political marketing, the 4P's and C's exist too. The products refer to the promises and favours conveyed by the political parties and their candidates. The price is the electoral support and the voter is considered as the customer. The promotion plan includes the advertising, rallies, TV debates, flyers, billboards, door to door canvassing, and other campaigning activities. Lock and Harris (1996) perceive that the political scientists understand that political marketing plays a key role in the context of political communications during the pre-election period only. Harrop (1990) argues that a marketing perspective offers a fresh slant on understanding electoral change and that marketing techniques have improved the quality of political communications during the British elections. In his perspective, political marketing would benefit parties to assess their positioning strategies in electoral choices.

Complete Chapter List

Search this Book:

[Reset](#)

Table of Contents

[View Full PDF \(/pdf.aspx?tid=237764&ptid=233941&clid=15&t=Table of Contents&isxn=9781799817345\)](#)

Preface

Samet Kavoğlu (Marmara University, Turkey), Meryem Salar (Kastamonu University, Turkey)

[View Full PDF \(/pdf.aspx?tid=237765&ptid=233941&clid=15&t=Preface&isxn=9781799817345\)](#)

Chapter 1

Political Communication, Freedom of Expression, and Ethics: An Analysis on the "Binding Group Decision" (/chapter/political-communication-freedom-of-expression-and-ethics/237766) (pages 1-14)

Samet Kavoğlu (Marmara University, Turkey), Meryem Salar (Kastamonu University, Turkey)

Preview Chapter **\$29.50**

[\(/viewtitlesample.aspx?id=237766&ptid=233941&t=Political Communication, Freedom of Expression, and Ethics: An Analysis on the "Binding Group Decision"&isxn=9781799817345\)](#) [Add to Cart](#)

Chapter 2

Electoral Umpires and the Task of Tracking Political Campaign Funds: The Case of Nigeria (/chapter/electoral-umpires-and-the-task-of-tracking-political-campaign-funds/237767) (pages 15-51)

Benjamin Enahoro Assay (Delta State Polytechnic, Ogwashi-Uku, Nigeria)

Preview Chapter **\$29.50**

[\(/viewtitlesample.aspx?id=237767&ptid=233941&t=Electoral Umpires and the Task of Tracking Political Campaign Funds: The Case of Nigeria&isxn=9781799817345\)](#) [Add to Cart](#)

Chapter 3

The Narratives of Neuroscience in Fiction as Propaganda Warfare (/chapter/the-narratives-of-neuroscience-in-fiction-as-propaganda-warfare/237768) (pages 52-88)

Kenneth James Boyte (Middlebury Institute of International Studies at Monterey, USA)

Preview Chapter **\$29.50**

[\(/viewtitlesample.aspx?id=237768&ptid=233941&t=The Narratives of Neuroscience in Fiction as Propaganda Warfare&isxn=9781799817345\)](#) [Add to Cart](#)

Chapter 4

The Biased Media and Their Utilization of Propaganda: The True Obstructionists of World Events and Our Minds (/chapter/the-biased-media-and-their-utilization-of-propaganda/237769) (pages 89-113)

David B. Ross (Nova Southeastern University, USA), Gina L. Peyton (Nova Southeastern University, USA), Melissa T. Sasso (Nova Southeastern University, USA), Rande W. Matteson (Nova Southeastern University, USA), Cortney E. Matteson (Orange County School District, USA)

Preview Chapter **\$29.50**

[\(/viewtitlesample.aspx?id=237769&ptid=233941&t=The Biased Media and Their Utilization of Propaganda: The True Obstructionists of World Events and Our Minds&isxn=9781799817345\)](#) [Add to Cart](#)

Chapter 5

Bernays, Horkheimer, and Adorno: Theory in the Age of Social Media (/chapter/bernays-horkheimer-and-adorno/237770) (pages 114-135)

William Sipling (University of St. Thomas, USA)

Preview Chapter **\$29.50**
 (/viewtitlesample.aspx? Add to Cart
 id=237770&ptid=233941&t=Bernays,
 Horkheimer, and
 Adorno: Theory
 in the Age of
 Social
 Media&isxn=9781799817345)

Chapter 6

March 31, 2019 Local Elections and the Media (/chapter/march-31-2019-local-elections-and-the-media/237771) (pages 136-151)

Ceren Yegen (Mersin University, Turkey)

Preview Chapter **\$29.50**
 (/viewtitlesample.aspx? Add to Cart
 id=237771&ptid=233941&t=March
 31, 2019 Local
 Elections and the
 Media&isxn=9781799817345)

Chapter 7

Online Political Party Engagement: The Case of Generation Y Consumers in Istanbul (/chapter/online-political-party-engagement/237772) (pages 152-169)

Şahver Omeraki Çekirdekci (Haliç University, Turkey), Aytaç Tereci (Doğuş University, Turkey)

Preview Chapter **\$29.50**
 (/viewtitlesample.aspx? Add to Cart
 id=237772&ptid=233941&t=Online
 Political Party
 Engagement:
 The Case of
 Generation Y
 Consumers in
 Istanbul&isxn=9781799817345)

Chapter 8

Understanding Indian Political Parties Through the Lens of Marketing Management: Towards a Conceptual Political Marketing Model (/chapter/understanding-indian-political-parties-through-the-lens-of-marketing-management/237773) (pages 170-190)

Pinaki Nandan Pattnaik (NALSAR University of Law, India), Mahendra Kumar Shukla (NALSAR University of Law, India)

Learn More

About IGI Global (/about/) | Partnerships (/about/partnerships/) | COPE Membership (/about/memberships/) | Management (/contact/) | Job Opportunities (/about/staff/job-opportunities/) | FAQ (/faq/) | Management Team (/about/staff/)

Resources For

Librarians (/librarians/) | Authors/Editors (/publish/) | Distributors (/distributors/) | Instructors (/course-adoption/) | Translators (/about/rights-permissions/translation-rights/)

Media Center

Webinars (/webinars/) | Blogs (/newsroom/) | Catalogs (/catalogs/) | Newsletters (/newsletters/)

Policies

Privacy Policy (/about/rights-permissions/privacy-policy/) | Cookie & Tracking Notice (/cookies-agreement/) | Fair Use Policy (/about/rights-permissions/content-reuse/) | Accessibility (/accessibility/) | Ethics and Malpractice (/about/rights-permissions/ethics-malpractice/)

Preview Chapter **\$29.50**
 (/viewtitlesample.aspx? Add to Cart
 id=237773&ptid=233941&t=Understanding
 Indian Political
 Parties Through
 the Lens of
 Marketing
 Management
 Towards a
 Conceptual
 Political
 Marketing
 Model&isxn=9781799817345)

View Full PDF (/pdf.aspx?
 tid=237775&ptid=233941&ctid=17&t=About the
 Contributors&isxn=9781799817345)

View Full PDF (/pdf.aspx?
 tid=237775&ptid=233941&ctid=17&t=About the
 Contributors&isxn=9781799817345)

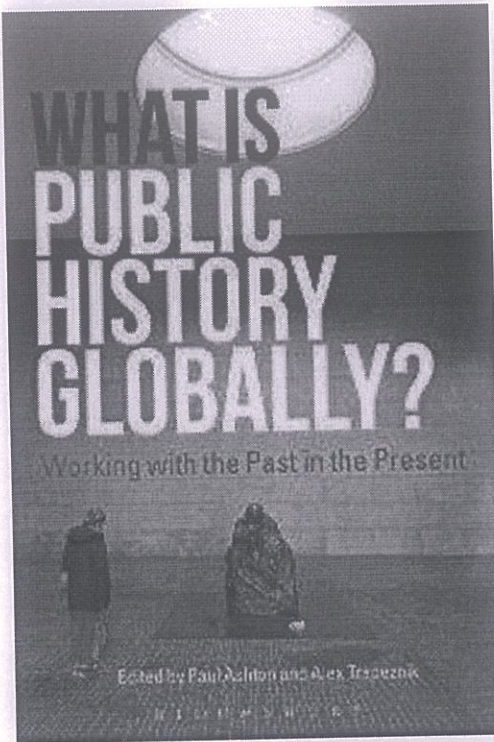
(http://www.facebook.com/pages/IGI-Global/138206739534176?ref=sgm)

(http://twitter.com/igiglobal)

(https://www.linkedin.com/company/igi-global/) (http://www.built-forgotten-children.org)

(https://publicationethics.org/category/publisher/igi-global)





What Is Public History Globally?
Working with the past in the present
Paul Ashton and Alex Trapeznik (eds)

Bloomsbury Academic 2019

Preview Only

The full text of this chapter is only available to members of institutions that have purchased access. Read more about which [Collections are available at your institution](#).

Chapter DOI [10.5040/9781350033306.ch-006](https://doi.org/10.5040/9781350033306.ch-006)

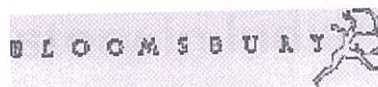
Page Range 79–92

Chapter 6. Public History in India: Towards a People's Past

Indira Chowdhury and Srijan Mandal

Extract

Indira Chowdhury Srijan Mandal Public history, as it is practised in India, defies easy attempts at classification. This is partially because hardly anything that would be recognized as public history is identified as such. Despite its ever-increasing acceptance outside India as a discipline and a practice distinct from history, it has yet to gain any currency within India. Any attempts to identify works that are self-consciously public history in the Indian context are not likely to yield much fruit. Nor will borrowing any of its many definitions from the West and trying to find works that adhere to it in India. Instead, this chapter will try to highlight the myriad forms that public engagements with the past have taken place in India. In India, there exist practices that actively engage with the past. Sometimes these are seen as resources that historians might use. But more often they are viewed as...



Copyright © 2023

Bloomsbury Publishing

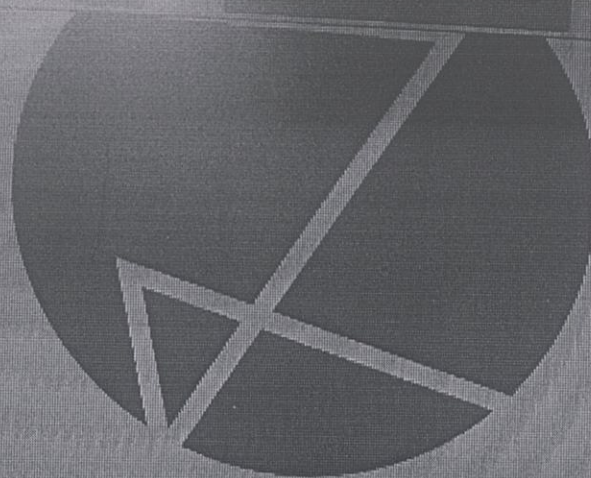
Registered in England No. 01984336

Chowdhury, Indira, and Srijan Mandal. "Public History in India: Towards a People's Past." *What Is Public History Globally?: Working with the past in the present*. Ed. Paul Ashton and Alex Trapeznik. London: Bloomsbury Academic, 2019. 79–92. *Bloomsbury Collections*. Web. 16 Mar. 2023.
<<http://dx.doi.org/10.5040/9781350033306.ch-006>>.

Retrieved from Bloomsbury Collections, www.bloomsburycollections.com

Access provided by Nalsar University of Law.

Copyright © Paul Ashton, Alex Trapeznik and Contributors 2019. All rights reserved. Further reproduction or distribution is prohibited without prior permission in writing from the publishers.



ZASPiL

ZAS Papers in Linguistics

ZASPiL 64 – August 2020

Natalia Gagarina & Josefin Lindgren (Eds.)

New language versions of
**MAIN: Multilingual Assessment Instrument for Narratives –
Revised**

Natalia Gagarina, Daleen Klop, Sari Kunnari, Koula Tantele, Taina
Välismaa, Ute Bohnacker & Joel Walters

Contents

Part I. Adapting MAIN: Multilingual Assessment Instrument for Narratives – Revised to individual languages

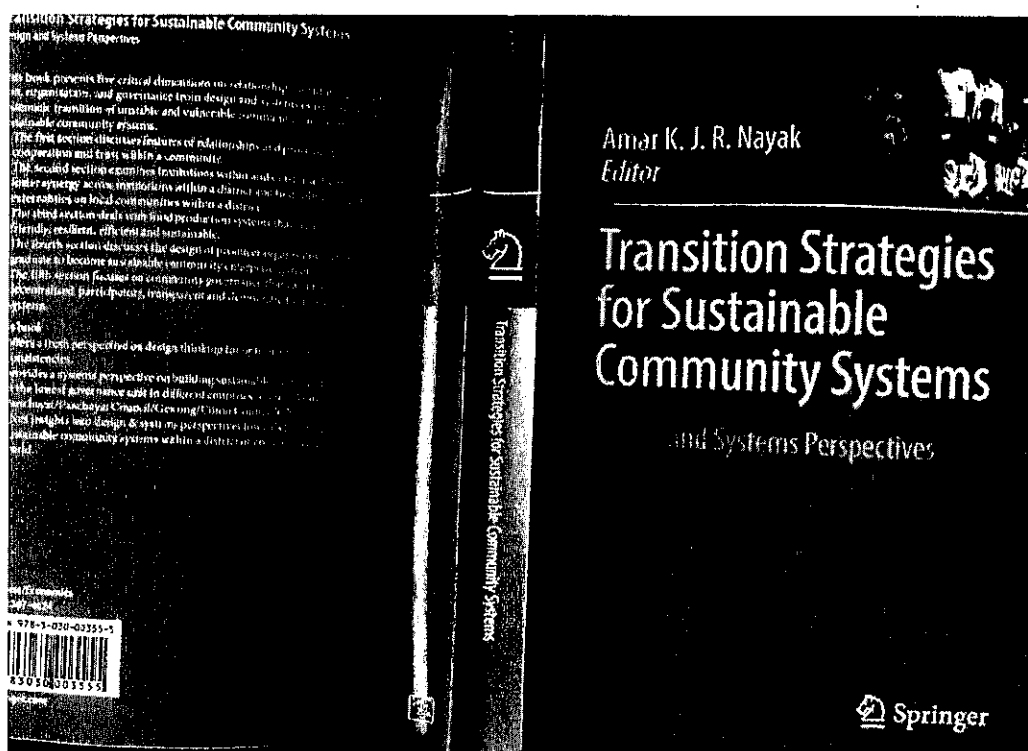
<i>Natalia Gagarina & Josefín Lindgren</i> Preface	ix
<i>Ute Bohnacker & Natalia Gagarina</i> Introduction to MAIN-Revised, how to use the instrument and adapt it to further languages	xiii
<i>Ute Bohnacker & Rima Haddad</i> Adapting MAIN to Arabic	1
<i>Eva Meier & Milena Kushnast</i> Storytelling and retelling in Bulgarian: a contrastive perspective on the Bulgarian adaptation of MAIN	11
<i>Angel Chan, Kelly Cheng, Rachel Kan, Anita M.-Y. Wong, Roxana Fung, Janice Wong, Timothy Chng, Amelie Cheung, Karen Yuen, Barbie Chui, Joyce Lo & Natalia Gagarina</i> The Multilingual Assessment Instrument for Narratives (MAIN): Adding Cantonese to MAIN	23
<i>Alondra Camus & Melina Aparici</i> Adapting the Multilingual Assessment Instrument for Narratives (MAIN) to Catalan	31
<i>Gordana Hrčica & Jelena Kuvač Kraljević</i> The Croatian adaptation of the Multilingual Assessment Instrument for Narratives	37
<i>Kristine Jensen de López & Hanne B. Søndergaard Knudsen</i> The adaptation of MAIN to Danish	45
<i>Elma Blom, Tessel Boerma & Jan de Jong</i> Multilingual Assessment Instrument for Narratives (MAIN) adapted for use in Dutch	51
<i>Reili Argus & Andra Klütt</i> The adaptation of MAIN to Estonian	57
<i>Evelyn Bosma & Jelske Dijkstra</i> Multilingual Assessment Instrument for Narratives (MAIN) adapted for use in West Frisian	63
<i>Vasiliki Chondrogianni & Morna Butler</i> Adapting the Multilingual Assessment Instrument for Narratives (MAIN) to Scottish Gaelic	69
<i>Uma Maheshwari Chimirala</i> Towards a convivial tool for narrative assessment: Adapting MAIN to Gondi (Dantewada, India), Halbi and Hindi for Gondi- and Halbi-Hindi speaking bilinguals	77
<i>Ianthi Maria Tsimpli, Maria Andreou & Eleni Peristeri</i> The Multilingual Assessment Instrument for Narratives: Greek	101

<i>Monika Madappa, Yashni Gurung & Madhavi Gopinath</i> Spinning a yarn across languages: Adapting MAIN for India	107
<i>Hrafnhildur Ragnarsdóttir</i> The adaptation of MAIN to Icelandic	117
<i>Mary-Pat O'Malley & Stanisława Antonijević</i> Adapting MAIN to Irish (Gaeilge)	127
<i>Chiara Lavorato & Maja Roch</i> Italian adaptation of the Multilingual Assessment Instrument for Narratives	139
<i>Wenchun Yang, Angel Chan & Natalia Gagarina</i> The Multilingual Assessment Instrument for Narratives (MAIN): Adding Kana to MAIN	147
<i>Constanze Weth & Cyril Wealer</i> The adaptation of MAIN to Luxembourgish	153
<i>Jin Luo, Wenchun Yang, Angel Chan, Kelly Cheng, Rachel Kan & Natalia Gagarina</i> The Multilingual Assessment Instrument for Narratives (MAIN): Adding Mandarin to MAIN	159
<i>Yulia Rodina</i> Using LITMUS-MAIN with Norwegian-Russian bilingual children growing up in Norway	163
<i>Karolina Mieszkowska, Agnieszka Otwinowska, Maria Bielecka-Pilau, Dorota Kiebzak-Mondera, Marcin Opacki & Ewa Haman</i> Polish MAIN: how was it developed and how has it been used so far?	169
<i>Laís Vitoria Cunha de Aguiar & Márcia Nunes Martins dos Reis</i> Adapting MAIN to Brazilian Portuguese	183
<i>Ljiljana Jelić, Ivana Bogavac & Aleksandra Petrović</i> Serbian version of the Multilingual Assessment Instrument for Narratives (MAIN)	189
<i>Svetlana Kapalková & Monika Nemcová</i> MAIN: The Slovak version and pilot data	199
<i>Daleen Klop & Monique Visser</i> Using MAIN in South Africa	207
<i>Maria José Ezeizabarrena & Isabel García del Real</i> The Spanish adaptation of MAIN	211
<i>Kathleen Kay Amora, Rowena Garcia & Natalia Gagarina</i> Tagalog adaptation of the Multilingual Assessment Instrument for Narratives: History, process and preliminary results	221
<i>Qurboniddin Alimshoy & Aleksandra Trifonova</i> MAIN in the Tajik and Shughani languages of Tajikistan	235

<i>Zubair Torwali</i> Adapting the Multilingual Assessment Instrument for Narratives (MAIN) to Torwali	241
<i>Ilham Mavis, A. Muge Tuncer & Semra Selvi Balo</i> The adaptation of MAIN to Turkish	249
<i>Saboor Hamdani, Rachal Kim, Angel Chan & Natalia Gagarina</i> The Multilingual Assessment Instrument for Narratives (MAIN): Adding Urdu to MAIN	257
<i>Tue Trinh, Giang Pham, Ben Pham, Hien Hoang & Linh Pham</i> The adaptation of MAIN to Vietnamese	263
<i>Yulia Androsova & Aleksandra Trifonova</i> Storytelling using MAIN in Yakut	269

Part II. MAIN-Revised materials to be used for assessment

The available *MAIN-Revised* language versions can be downloaded after registration. [Here is the link to registration and language versions.](#)



Publisher: Springer, 1st Ed. 2019 edition (4th February 2019)
 ISBN-10: 3030003558
 ISBN-13: 978 - 3030003555

Chapter 20 Effect of Firm Size on Performance Leading to Sustainability

Aradhna Kumar Panda and Anur K. J. R. Nayak

Abstract This chapter argues that enterprises intending to achieve sustainable performance need to restrict their firm size. It explains the indicators which can be observed in firms working towards sustainable performance. After examining several examples and case studies, it deduces that firms looking to achieve this performance must develop trust, co-operation, transparency and concern for others which can be achieved through better interdependence and interconnectiveness between all stakeholders. This is possible if the firm stays small. This chapter tries to explain this aspect through examples and analysis.

Keywords Organisation design • Cooperation • Trust • Interconnection
Interdependence • Size • Sustainability • Social capital

20.1 Introduction

A firm survives and thrives by working through its external and internal context while adhering to its set of core values. Despite best intentions, many firms fail to survive and shut down their business. If financial success is the only criteria for long-term survival, 83% of Fortune 500 companies have perished in the last sixty years (Perry 2014). The average lifespan of a company listed in the S & P 500 index of leading US companies has decreased by more than fifty years in the last century, from sixty-seven years in the 1920s to just fifteen years by 2012 (Gutenson 2012). In another study by BCG on a sample of 35,000 listed companies, they conclude that corporations are perishing sooner than before. Since 1950, the total lifespan of companies has significantly decreased (Reeves/Puschel 2015).

These firms might have created greater products, captured a major market share and generated wealth for the shareholders, but could not sustain their advantages in

Aradhna Kumar Panda, Hotel Corporate Interface, Centre for Management Studies, Nalanda University of Law, Hyderabad, India; Email: aradhna@nula.ac.in
Anur K. J. R. Nayak, Professor of Strategy & NABARD Chair Professor, AMU, state Capital, India; Email: anur@amuhd.ac.in

© Springer Nature Switzerland AG 2019
K. J. R. Nayak (ed.), *Transition Strategies for Sustainable Economies*, Springer, The Anthropocene, DOI: 10.1007/978-3-030-00300-2_13



Document details - Human capital: The arbitrary ranking of work status

38

1 of 1

[Export](#) [Download](#) [More...](#)

Cited by 0 documents

Proceedings of the 33rd International Business Information Management Association Conference, IBIMA 2019: Education Excellence and Innovation Management through Vision 2020

2019, Pages 495-504

33rd International Business Information Management Association Conference: Education Excellence and Innovation Management through Vision 2020, IBIMA 2019; Granada; Spain; 10 April 2019 through 11 April 2019; Code 152210

Inform me when this document is cited in Scopus:

[Set citation alert >](#)

[Set citation feed >](#)

Related documents

Find more related documents in Scopus based on:

[Authors >](#) [Keywords >](#)

Human capital: The arbitrary ranking of work status(Conference Paper)

Ahmad, N., Lilienthal, G., Mustafa, F.

^aSultan Sharif Ali Islamic University (UNISSA), Brunei Darussalam

^bCarrington Rand, Yau Ma Tei, Hong Kong

^cNALSAR University of Law, Hyderabad, India

Abstract

American senior managers now demand greater clarity about how a business organization's people create value for the stakeholders, demanding the linking of human capital with business outcomes, and suggesting that the senior managers were regressing to earlier times. This article's objective is to investigate critically the genesis and character of human capital. Human capital is the present value of a person's future income from his own labour. The question is whether the concept "human capital" seeks somehow to direct labour, and if so, how. We try to show that the term 'human capital' suggests the formation of a new institution, fully operational since the 1960s. It acts to differentiate the capital values of people, and thereby their incomes, through assessments of their different kinds of usefulness to society. The research outcomes are that, in consequence of international human capital rules, the institution of human capital directs the universities, and they so direct their students with the force of differential degree status. The various degrees now take on various arbitrary ranks of work status, rather than purely academic status, applying an institutional human capital force to people who want to raise their incomes. © 2019 International Business Information Management Association (IBIMA).

Author keywords

[Directing labour](#)[Direction by institution](#)[Human capital](#)[OECD Rules](#)[Ranking of work](#)

ISBN: 978-099985512-6

Source Type: Conference Proceeding

Original language: English

Document Type: Conference Paper

Volume Editors: Soliman K.S.

Publisher: International Business Information Management Association, IBIMA

© Copyright 2020 Elsevier B.V., All rights reserved.

SciVal Topic Prominence ①

Topic:

Prominence percentile:

①

39-40



OakBridge
PUBLISHING

(<https://www.oakbridge.in/>)

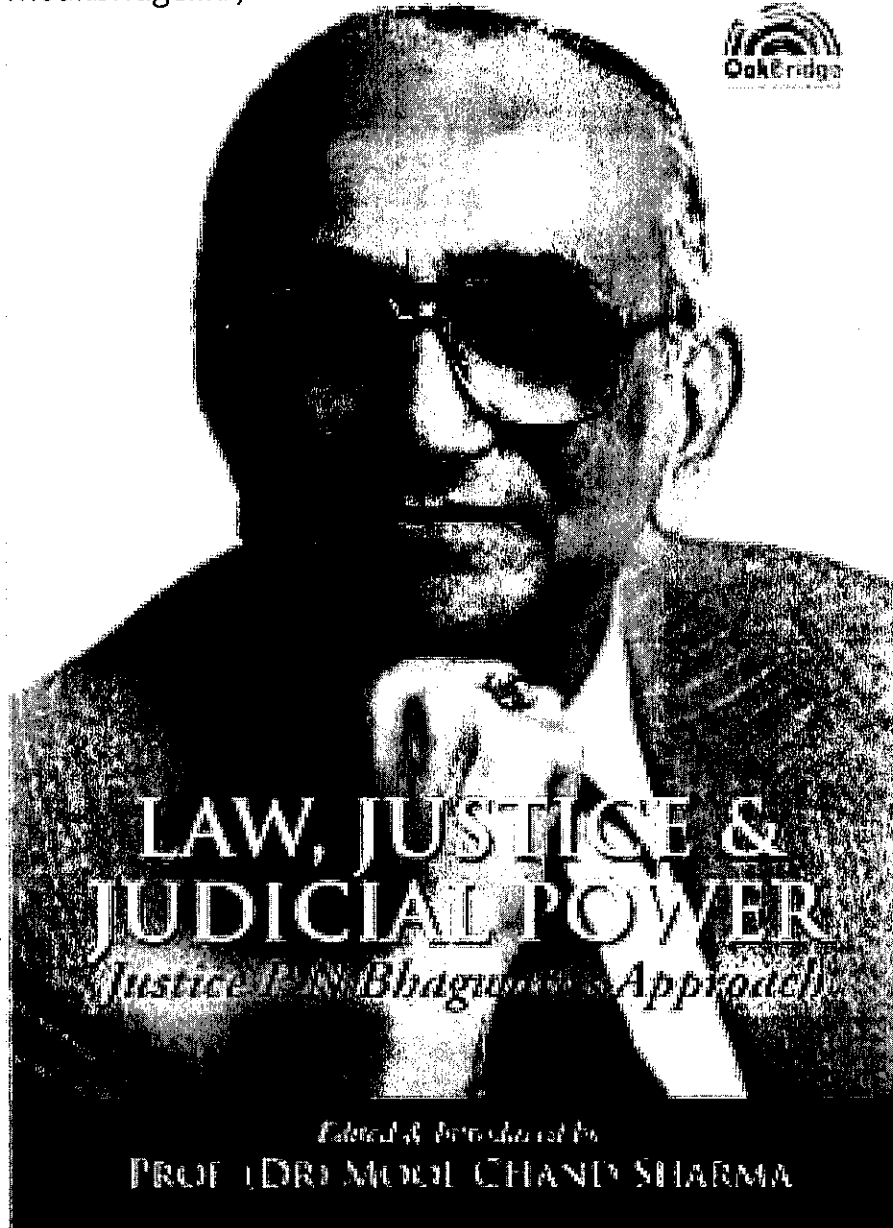
Law, Justice and Juc

Home (<https://www.oakbridge.in/>) / Legal (<https://www.oakbridge.in/product-category/legal/>) / Law, Justice and Judicial Power



OakBridge
PUBLISHING

(<https://www.oakbridge.in/>)





OakBridge
PUBLISHING

LAW, JUSTICE AND JUDICIAL POWER
(<https://www.oakbridge.in/>)

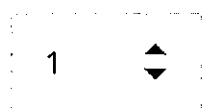
₹995.00

Author: Mool Chand Sharma (<https://www.oakbridge.in/authors-contributors/moolchand-sharma/>)

Publisher: OAKBRIDGE PUBLISHING

ISBN: 9788193917138

Edition: 1



ADD TO CART

Category: Legal (<https://www.oakbridge.in/product-category/legal/>)

DESCRIPTION

REVIEWS

(0)

Law, Justice and Judicial Power: Justice P.N. Bhagwati's Approach is a Festschrift comprising of 24 essays written in the honor of the late Justice P.N. Bhagwati, former Chief Justice of India and contributed by eminent persons cutting across professions and disciplines including former Chief Justices of India and of other countries, sitting



OakBridge
PUBLISHING

especially through Constitutional Jurisprudence, transforming Indian Constitution from a paper being treated as a document to a source of power bringing social revolution and converting courts from being used as a forum by repeat players to forum for justice to poor, disadvantaged, minorities and exploited.

Professor (Dr.) Moolchand Sharma is an established scholar who has worked extensively in the area of Constitutional jurisprudence; Law, Political Economics and development; Law, Politics and Democracy; Poverty and Human Rights jurisprudence.

List of Contributors:

1. Justice A K Sikri
2. Justice (Dr) D Y Chandrachud
3. Justice M N Venkatachaliah
4. Justice A M Ahmadi
5. Justice Michael Kirby
6. K K Venugopal
7. Soli J Sorabjee
8. Prof. (Dr) Upendra Baxi
9. Prof. N R Madhava Menon
10. Bibek Debroy
11. Aparajita Gupta
12. (Dr) Abhishek Singhvi
13. (Dr) Shashi Tharoor
14. Baijayant Panda
15. Prof. Faizan Mustafa
16. Aymen Mohammed
17. Prof. Satish C Shastri
18. (Dr) Mark Dsouza
19. M C Mehta
20. A S Chandhiok
21. Rupinder Singh Suri
22. (Dr) Aman Hingorani
23. Ashok U Desai

FINDING JUSTICE BHAGWATI'S JUDICIAL LEGACIES*

I. Introduction

A significant amount of literature has been dedicated to understanding the 'judicial role'. This diverse literature often finds convergence in certain key themes: the role of judges in democracies¹ or dictatorships², the institutional relationships between the judicial and other branches of government and the ethical understanding of how judges approach legal questions (or how they *ought* to)³. Another key advancement in scholarship has been towards understanding judges as political (not necessarily partisan) actors, operating within the context of a broader political system and interacting with a diverse set of institutions.

These discussions in scholarship have allowed us to analyse the judicial role in a manner that does not view it in the same way as one views "Prometheans or saints"⁴. Instead one is allowed to view the role in a more multidimensional context. This scholarship allows for institutional explanations, or philosophical ones, but does not assist us much in analyzing a 'judicial legacy'. This roadblock is more insurmountable when one is to write about a personality such as Justice P. N. Bhagwati. Writings by⁵, and about⁶, Justice Bhagwati primarily focus on his work in expanding the institutional role of India's higher judiciary. Recent attempts have been made to also take a more critical look at India's experience with Public Interest Litigation (PIL)⁷, the inauguration and development of which was primarily led Justice Bhagwati.⁸

*Authors: Faizan Mustafa, Vice-Chancellor, NALSAR University of Law & Aymen Mohammed, Fellow, NALSAR University of Law

¹ See generally, "A Judge on Judging: The Role of a Supreme Court in a Democracy", Barak, Aharon, Faculty Scholarship Series. Paper 3692. (2002) http://digitalcommons.law.yale.edu/fss_papers/3692 and "The Role of Judges in a Government of, by and for the people: Notes for the Fifty Eighth Cardozo Lecture", Jack. B. Weinstein. Cardozo L. Rev. 1 (2008)

² "Courts and Judges in Authoritarian Regimes", Peter H. Solomon Jr., World Politics, Vol. 60, No. 1 (2007), Cambridge University Press

³ "The Ethical Basis of Legal Criticism", Felix Cohen, The Yale Law Journal, Vol. 41, No. 2, pp. 201-220 (1931)

⁴ "What Do Judges and Justices Maximize--(The Same Thing Everybody Else Does)", Richard A. Posner, 3 Sup.Ct. Econ. Rev. 1 (1993)

⁵ For example, see, "The Judiciary in India: A Hunger and Thirst for Justice", P. N. Bhagwati; C. J. Dias, 5 NUJS L. Rev. 171 (2012)

⁶ "A Judge as a Philosopher", Bharat Desai, Economic & Political Weekly, Vol. 52, Issue No. 27, (2017)

⁷ "Courting The People: Public Interest Litigation in Post-Emergency India", Anuj Bhuwania, Cambridge University Press (2017); "Farewell to Adjudicatory Leadership?", Upendra Baxi, NLUJ Student Law Journal (2017)

⁸ "Taking Suffering Seriously: Social Action Litigation Before the Supreme Court of India", Upendra Baxi, 4 Third World Legal Studies 107-132 (1985).

In understanding the judicial role in common law systems, a key theme has been to evaluate the part played by precedent or *stare decisis*.⁹ Judges, despite being ‘lawmakers’ and not mere interpreters, are still formally limited by precedent.¹⁰ Building on this principle, it would also mean that judges are conscious of ‘inaugurating’ precedent. In other words, where judges introduce new ‘tests’ or expand interpretations or create new precedent, they must be conscious of how a proposition or principle would be built on or applied subjectively. However, it is unfair to either hold a judge responsible for how successive benches chose to use a particular precedent, or to assess a judicial legacy on the basis of whether a particular principle was a ‘success’ or a ‘failure’.

In Justice Bhagwati’s case, literature has often found it important to distinguish the pre-Emergency and post-Emergency phases of his career. However, focus has primarily been on finding a *single, unifying* ‘legacy’ of his judgements¹¹. It is our argument that, perhaps, Justice Bhagwati’s work is better understood as ‘legacies’ rather than a single, coherent ‘legacy’. Instead of viewing Justice Bhagwati’s work as something to be deified, it would be helpful to rely on Baxi¹² when he insists that the judicial role is inherently political, and the question to ask is not “whether judges ought to have, and ought to exercise, law making discretion.” Instead, it would be appropriate to ask: “[W]hat kind of politics ought the Court engage in? It is not *whether* it should engage in it *at all*.” (emphasis original).

While Baxi was obviously raising institutional, rather than individual, questions, these questions are an important aide to analyse the judicial legacies of Justice Bhagwati without succumbing to consequentialist arguments. This approach protects us from sanitizing judicial legacies and instead allows us to read each legacy – whether a ‘success’ or ‘failure’ – as an individual reminder of what is at stake when judges make certain choices that “have substantive implications for design and direction of social transformation in India”¹³.

⁹ Supra note-1. Also, Bachan Singh v. State of Punjab, 1982 AIR 1325.

¹⁰ Ibid.

¹¹ “P.N. Bhagwati’s legacy: a controversial inheritance”, Anuj Bhuwania, The Hindu (June 27, 2017). Accessible at: <http://www.thehindu.com/opinion/lead/a-controversial-inheritance/article19150883.ece>

¹² “On How Not To Judge The Judges: Notes Towards Evaluation of the Judicial Role”, Upendra Baxi, Journal of the Indian Law Institute, Vol. 25, No. 2 (April-June 1983)

¹³ Ibid.

Therefore, we have briefly analysed four judgments authored by Justice Bhagwati: *ADM Jabalpur*¹⁴, *State of Rajasthan*¹⁵, *Maneka Gandhi*¹⁶ and the minority opinion in *Bachan Singh*¹⁷. Because literature on these judgments is undoubtedly not scarce, we have only attempted to contextualize the many legacies one could draw from these judgments. It is our belief that, while, Justice Bhagwati's rightful contributions to Indian constitutional jurisprudence are recognised and celebrated, one should not shy away from acknowledging the 'substantive implications' of judgments such as *ADM Jabalpur* and *State of Rajasthan*.

II. *ADM Jabalpur*: Judicial Apoliticism and Compulsion

Generally, the *ADM Jabalpur* case is referred, not for its substantive content, but as part of a larger narrative of the Indian judiciary. This narrative begins with the "black chapter" in Indian history – the period of emergency from 1975-77 and proceeded to an activist phase of the Supreme Court that was seeking its institutional rehabilitation and redemption from its past¹⁸.

However, such a narrative prevents us from comprehending the seriousness of what the judgment meant. It is obviously not our argument that critiques of *ADM Jabalpur* do not exist, instead, we argue that it is important to recognise how judges can conveniently take political decisions and garb it in the 'apolitical', as somehow devoid of society. Recent scholarship has attempted to rehabilitate the study of *ADM Jabalpur* in contexts larger than this straightforward narrative.¹⁹

In *ADM Jabalpur*, the Supreme Court dealt with the question of personal liberty guaranteed under Article 21 of the Constitution and whether such right subsisted despite a presidential proclamation under Article 359. Justice Bhagwati, in a separate but concurring opinion, endorsed the majority opinion: in the subsistence of a Presidential Order suspending the right to seek constitutional remedies, it would not be possible for detainees to seek redress by habeas corpus writ petitions.

While Justice Bhagwati's argument focused on the legal effect of the suspension by Presidential Order, he did provide us with a detailed explanation of how emergencies required "institutions and

¹⁴ *ADM Jabalpur v. S. S. Shukla* 1976 AIR 1207

¹⁵ *State of Rajasthan v. Union of India* 1977 AIR 1361

¹⁶ *Maneka Gandhi v. Union of India* 1978 AIR 597

¹⁷ *Bachan Singh v. Union of India* 1982 AIR 1325

¹⁸ "ADM Jabalpur's Antecedents: Political Emergencies, Civil Liberties, and Arguments from Colonial Continuities in India", Kalyani Ramnath, 31 Am. U. Int'l L. Rev. 209 (2016)

¹⁹ Ibid.

procedures different from those in normal times...”²⁰. What is perhaps, most interesting, is Justice Bhagwati’s willingness to recognise that, firstly, emergencies created “new facts” that required different responses and secondly, that “a national emergency creates problems for a democracy. [A] totalitarian government may handle such a situation without embarrassment, but apparent necessities evoked by danger often conflict gravely with the postulates of constitutional democracy”. In addition to this, Justice Bhagwati spends significant portion of his opinion on basing his justification on the internal logic of the law – and the justification of suspension of rights in light of an ongoing emergency. In this focus on the justifications of an emergency, Justice Bhagwati requires that we look at “the incontestable facts of history if we have regard to the experience of emergency governments of three large modern democracies – the United States, Great Britain and France.”

It is, of course, only the benefit of hindsight that would allow us to contest his premise with respect to the “experience of emergency governments” and how it impacted rule of law in their own jurisdictions. However, Justice Bhagwati is confident that “there is no reason why the Indian experience should be otherwise, if the *basic norms of constitutionalism in assumption of emergency powers are observed*”. (emphasis supplied). What these “norms of constitutionalism” are slightly unclear in his opinion.

In this, there is not only the presence of a non-problematic, unquestioning willingness to accept the premise of an ongoing emergency, but to also justify and enforce it. For example, while these “norms of constitutionalism” are mentioned, Justice Bhagwati had little motivation to validate the petitioners’ arguments: that suspension of a right under Article 21 did not mean a suspension of rule of law. In fact, Justice Bhagwati chose to dismiss this contention by arguing that once Article 21 was crystallized as a justiciable right, all other components of rule of law would remain unenforceable!²¹

It is difficult to deny that the opinion is well-written and presents purportedly coherent (if problematic) arguments to justify Justice Bhagwati’s decision. As judges often do, Justice Bhagwati, in this particular case, made ‘sound’ formalistic legal arguments. The hallmark of such arguments is that it assumes that law operates in an autonomous space, independent of societal or

²⁰ Supra, n-14. para. 497

²¹ Id. Para 530.

political context.²² Such an approach requires that judges act independent of their subjective experiences and limit their own perspectives or values in adjudication. In other words, it requires that judges take decisions in a contextual vacuum, and to swear by their own “judicial apoliticism” in the law-making process.

Hilbink’s framework of “judicial apoliticism” to understand why Chile’s judges, despite having been “‘trained under and appointed under democratic governments’ *and working in a country with a strong legal tradition, capitulated so completely to Pinochet’s military regime, condoning and giving a legal face to its repressions*’.”²³ While the answer to such a question can be found in explanations relating to co-optation or political pressure, it is argued that it was a long-standing attachment to judicial apoliticism. This apoliticism was grounded in the ideal that judges are junior partners in lawmaking. It was reflected in how judges would choose passivity in “rights issues” and observe a “tendency to defer to state and elite interests on matters relating to property, contracts and security”²⁴.

While a precise parallel between the Pinochet regime and Indira Gandhi’s temporary emergency is difficult to make, it is important to recognise that the context of *ADM Jabalpur* was, in fact, not significantly different from any authoritarian regime premised on a strong executive. Judicial apoliticism, in both contexts, allowed judges to formally discharge their adjudicatory functions while refusing to remedy rights violations and instead deferring to the executive’s “wisdom”.

For example, it is recognised that Chilean judges prioritized the construction of a narrow field of what was ‘legal’ (in opposition to ‘political’). The result of such approach was that the Chilean Supreme Court had narrowed its own jurisdiction in relation to military justice, and refused to accept most habeas corpus petitions.²⁵ Judicial apoliticism allows judges to ignore the real-life impact of their decision-making, and instead furthers in legitimizing (or at least providing cover to) authoritarian regimes.

The most striking example of this approach is, again, found in Justice Bhagwati’s judgment. When the detainee-petitioners argued that barring an individual’s right to move to court against an illegal

²² Supra, note.3

²³ “Courts, Human Rights, and Transitional Justice: Lessons From Chile”, David Sugarman, *Journal of Law and Society*, Vol. 36, No. 2 (Jun., 2009), pp. 272-281

²⁴ Supra, note 2.

²⁵ Supra, note.23

detention would “encourage the executive to disregard the law and exercise arbitrary powers of arrest”. This fear, one could argue, is not out of place – considering that the barring of a remedy does result in a right being more or less non-existent. However, Justice Bhagwati had little patience for such arguments. While conceding that such fears may not be unfounded, he countered with this rhetorical question: “Should we accept a construction with such fearful consequences [...] I do not think I can allow myself to be deflected by such considerations from arriving *at what I consider to be the correct; construction of the constitutional provision.*”²⁶ (emphasis supplied).

Justice Bhagwati relied on formalistic legal principles to bypass what was his judicial obligation: upholding the rule of law. More importantly, his judicial apoliticism allowed him to not only sidestep the question of rule of law, but also ignore the *real* impact that such a judgment would have on *real* people. In conclusion to this section, it is instructive to look at Justice Bhagwati’s choices: despite his “love of personal liberty”, he could not be expected to be “Plato’s philosopher king”. Before concluding his judgment, he emphasized that he was ultimately “driven by judicial compulsion” in holding these suits non-maintainable.²⁷ In doing so, Justice Bhagwati also sought to distance himself (as an individual) from an unadulterated, separate entity (his judicial role).

III. *Maneka Gandhi* and *State of Rajasthan*: Pitfalls of a Recovering Democracy

It has been helpful to understand *ADM Jabalpur* as a case of an independent judiciary that seeks to curtail itself in an attempt to prevent a complete perceived erosion of the institution.²⁸ In understanding Justice Bhagwati’s post-emergency judgements, one is often directed to his contribution in expanding the scope of Article 21 in *Maneka Gandhi* and introducing the substantive due process as a prerequisite. However, it is submitted that one cannot possibly understand Justice Bhagwati’s contributions in *Maneka Gandhi* without also analyzing the institutional impact of *State of Rajasthan* from the same time period. It is extremely difficult to guess what occurred in the time period between these two judgments (approximately nine months) that transformed how Justice Bhagwati viewed his own judicial role.

²⁶ Supra note 24, paragraph 557

²⁷ Ibid, paragraph 559

²⁸ See generally, “Working a Democratic Constitution: History of the Indian Experience”, 340-43 (1999) as cited in supra note 18 on p. 212 (“[T]he judges either were protecting the institution from an ill-intentioned government or protecting their personal futures or both”)

Maneka Gandhi represented the beginning of the ‘redemptive’ or ‘atoning’ phase of the Indian judiciary. Following *Maneka Gandhi* would be a series of judgments that would expand the scope of Article 21 to include various un-enumerated rights, diluting *locus standi* requirements and innovating the use of *mandamus*. However, more significantly, Justice Bhagwati allowed for *real* considerations of *real* people to factor into how one must interpret the Constitution.

Despite the fact that *E.P.Royappa*²⁹ had already inaugurated the doctrine of non-arbitrariness, Justice Bhagwati could have conveniently chosen to rely on restrictive constitutional interpretations and justify it as a judicial compulsion. However, the legacy of Justice Bhagwati’s opinion in *Maneka Gandhi* is his willingness to choose creative interpretations that allowed for the expansion of substantive rights and remedies to citizens. It is also a case that reflects the judge’s powerful ability to find coherent and sustainable legal arguments in order to justify her politics. At this point, it would be important to take note of Baxi’s questions that allow us to identify “the kind of politics [the Court] *ought to do* in a free society” (emphasis supplied):

*It is only when we accept that the Court is doing politics, in this sense, that the question can arise as to what kind of politics it ought to do in a free society: the politics of justice or politics of power? the politics of order or that of change? the politics of status quo or that of innovation? the politics of survival or that of aspiration? the politics of establishment or that of opposition? the politics of today (the immediate present) or of tomorrow and the day after (the immediate future)? the politics for the people or politics against the people the politics of hope or the one of despair?*³⁰

Maneka Gandhi answered some of these questions with clarity. There would be no doubt that the introduction of substantive due process incredibly expanded the scope and quality of protections against state power available to a citizen. Unlike *ADM Jabalpur*, where Justice Bhagwati clearly preferred a politics of order and status quo over that of change and innovation. Perhaps, most importantly, Baxi identifies the “politics of the present” as a significant consideration. While *ADM Jabalpur* was marked by a dismissal of concerns regarding an all powerful executive, *Maneka Gandhi* saw a choice that prioritized institutional protections in the future (“politics of hope”) over one of restrained political choices (“politics of despair”).

²⁹ Royappa v. State of Tamil Nadu 1974 AIR 555

³⁰ Supra note 12

There can be no doubt that *Maneka Gandhi* marks an important departure, but also an important inauguration: expansion of substantive protections is recognition of a clear imbalance between state power and individual citizenry. The absence of recognizing this imbalance manifests in inconsistent institutional practices and a “subservient” judiciary.

A break from an authoritarian past allows judges to ‘reinvent’ their judicial role in a new political context. An empowered court is sometimes a key development in transitioning democracies; judges are more willing to expand the scope of rights, limit executive power and develop institutional autonomy (or at least attempt at delineating judicial independence). This is also reflected in the post-emergency Supreme Court of India. However, while post-emergency India may not qualify as a transitional democracy, it is appropriate to consider this phase of the Supreme Court as the ‘recovering democracy’ phase, that was marked by the entry of newer political forces that sought to undo some of the “sins” of the national emergency.

This linear understanding between pre-emergency and post-emergency Supreme Court often allows us to ignore a key contradiction: *State of Rajasthan v. Union of India*. While India had just begun to recover from the emergency, Justice Bhagwati chose to endorse the decision of the Central Government to dismiss Congress-run state governments under Article 356 of the Constitution of India. Unlike *ADM Jabalpur* and *Maneka Gandhi*, this case is unique because the impact of the decision would not directly affect individual citizens, but the extremely contingent institutional relationship between the Union and the States.

While the invocation of Article 356 has significantly reduced in past years, Justice Bhagwati’s interpretation of the provision was literal and did not account, in any way, for the institutional effect that such an interpretation would have on the federal structure of the country. While *Bommai*³¹ remedied some of the difficulties in *State of Rajasthan*, the most important learning from the judgment was, how even judges depart from their own stated approaches to constitutional interpretation. If one were to compare Justice Bhagwati’s opinion *ADM Jabalpur* to his opinion in *State of Rajasthan* – it would be appropriate to say that he followed certain key approaches: literal construction, reliance on doctrinal precedent and an appearance of aloofness from the factual matrix of the case.

³¹ Bommai v. Union of India 1994 AIR 1918

However, in both *ADM Jabalpur* and *State of Rajasthan*, one also observes how the judge takes explicitly “political” (perhaps partisan) justifications and provides them with legal cover³². While in *ADM Jabalpur*, this took the form of elaborating and rationalizing the premise of the Constitution’s emergency provisions; in *State of Rajasthan*, this approach was more direct. Justice Bhagwati not only upheld the decision to dismiss the Congress-ruled governments, but also validated the rationale for the same: that the Congress party had lost its legitimacy with its defeat in the Lok Sabha elections; and therefore, these state governments should take it as a sign of public disenchantment and step down. With no constitutional or textual justification available, Justice Bhagwati merely recorded these statements as fact³³:

“This is not a case where just an ordinary defeat has been suffered by the ruling party in a State at the elections to the Lok Sabha. There has been a total rout of candidates belonging to the ruling party. In some of the Plaintiff States, the ruling party has not been able to secure a single seat. Never in the history of this country has such a clear and unequivocal verdict being given by the people, never a more massive vote of no-confidence in the ruling party. When there is such crushing defeat suffered by the ruling party and the people have expressed themselves categorically against its policies, it is symptomatic of complete alienation between the Government and the people. It is axiomatic that no Government can fraction efficiently and effectively in accordance with the Constitution in a democratic set up unless it enjoys the goodwill and support of the people. Where there is a wall of estrangement which divides the Government from the people and there is resentment and antipathy in the hearts of the people against the Government, it is not at all unlikely that it may lead to instability and even the administration may be paralysed. The consent of the people is the basis of democratic form of Government and when that is withdrawn so entirely and unequivocally as to leave no room for doubt about the intensity of public feeling against the ruling party, the moral authority of the Government would be seriously undermined and a situation may arise where the people may cease to give

³² For example, judges often record their personal opinions in a tone and manner that would make a reader think of it as fact. One does not have to look far to see how, in the garb of ‘neutrality’ and ‘apoliticism’, judges not only make law, but routinely ‘do politics’ (to quote *Baxi*). In this regard, an extract from Lahoti, J’s judgement in *Bal Patil v. Union of India* is instructive: “Differential treatments to linguistic minorities based on language within the State is understandable but if the same concept for minorities on the basis of religion is encouraged, the whole country, which is already under class and social conflicts due to various divisive forces, will further face division on the basis of religious diversities. Such claims to minority status based on religion would increase in the fond hope of various sections of people getting special protections, privileges and treatment as part of the constitutional guarantee. Encouragement to such fissiparous tendencies would be a serious jolt to the secular structure of constitutional democracy. We should guard against making our country akin to a theocratic State based on multinationalism. Our concept of secularism, to put it in a nutshell, is that the “State” will have no religion. The States will treat all religions and religious groups equally and with equal respect without in any manner interfering with their individual rights of religion, faith and worship.” Not even for a moment is Lahoti, J uncomfortable with negating constitutional protections afforded to religious minorities. In fact, he is extremely comfortable in drawing inferences and predicting the future – the dog-whistle here, is that, regardless of Constitutionally guaranteed rights, recognition of religious minorities is the same as encouraging “fissiparous tendencies”

³³ *Supra*, note. 15

respect and obedience to governmental authority and even conflict and confrontation may develop between the Government and the people leading to collapse of administration. These are all consequences which cannot be said to be unlikely to arise from such an unusual state of affairs and they may make it impossible for the Government of the State to be carried on in accordance with the provisions of the Constitution.”

Justice Bhagwati again records his opinions as fact: there is no material to argue that an electoral verdict could be translated into a withdrawal of consent. Furthermore, the constitutional framework does not indicate that judges are empowered to ensure uniformity between the parties that rule at the Union and the parties that rule at the State. What is the basis of equating the electoral verdict in Lok Sabha elections with results of State Legislature elections? The consequences of extending this logic would defeat the very purpose of having states as constituent units of the Union. It would mean that the states would get reduced to ‘provinces’ that are governed at the pleasure of the Union Government, and not the electorate. In this context, it is stark how Justice Bhagwati was comfortable in endorsing the executive’s logic and providing it with sufficient judicial cover.

Of course, an explanation of this judgement could not simply be attributed to cynical political realignment. However, it does indicate the vulnerability of newer democracies and the contingent role courts must play in them: judges are often required to parcel their autonomy in order to retain some amount of their legitimacy.

As Baxi labours to point out, the manner in which we envisage the judicial role cannot be imported wholesale from established common law systems in matured democracies. The judicial role in developing countries has to be contextualized within the political realities of the situation. While discussions in the developed world would focus on the judicial role in relation to the exercise of discretion or the scope of judicial review; in the developing world, discussions would have to focus on “institutionalization of power and authority of the judiciary, and at times even of its survival”³⁴. It is, therefore, important for us to remember that one must be willing “to concede that modes of political and social action by judiciary as well as modes of juristic analysis must vary across these societies and cultures”.

IV. Conclusion: *Bachan Singh* as Redemption?

³⁴ Supra, note. 12

Therefore, it has been our aim to view Justice Bhagwati's role in the Supreme Court, not merely as that of an individual but as someone who, by their position, was required to navigate institutional and political considerations that judges in developed common law countries may not be required to address. So if one were to concede that political contexts, or institutional limitations resulted in *ADM Jabalpur* and *State of Rajasthan*, then *Maneka Gandhi* is a reflection of what an empowered judge can deliver.

It is difficult to overcome one's analysis of judicial behavior as simplistically influenced by broader political trends. It is also difficult to overcome an analysis that focuses on a judiciary seeking to assert and legitimize itself in light of its emergency past. The latter narrative is often used to distinguish pre-emergency and post-emergency periods of the Supreme Court and how the second period saw the Court 'atoning' for its 'sins' during the emergency. Perhaps we must rephrase Justice Bhagwati's work at the Supreme Court in terms of 'redemption' from his past. While *Maneka Gandhi* offered the ability for him to expand substantive due process protections, his dissent in *Bachan Singh* offers us some clues as to how the judge was not merely 'rehabilitating' himself, but seeking to disown his judicial apoliticism. Therefore, one is not surprised when Justice Bhagwati's dissent begins with the declaration that he is morally opposed to the death penalty. Before dealing with any substantive question of the constitutionality of death penalty, Justice Bhagwati comfortably states that where "[a] judge feels strongly that it is not competent to the state to extinguish the flame of life in an individual by employing the instrumentality of the judicial process, it is his bounden duty, in all conscience, to express his dissent, even if such killing by the State is legitimized by previous decision of the court". (emphasis supplied)

This was an absolute turnaround from the phraseology of "judicial conscience" and "judicial compulsion" to one of *individual* conscience and duty. It is this aspect of *Bachan Singh*'s minority judgment that is often ignored. Justice Bhagwati spends significant time elaborating on how a judge must approach such a question before them. Oftentimes, he relied on philosophical, political, sociological, psychological and even literary works to buttress his argument on the untenability of the death penalty in the Constitution. Instead of dismissing concerns of power relations in the misuse of law (which was how *State of Rajasthan* and *ADM Jabalpur* operated), Justice Bhagwati recognizes the disproportionate role of identity and class in executions. All of this was a radical

departure from how Justice Bhagwati sought to “record” facts and legally validate them in earlier judgments. Instead, Justice Bhagwati chose to rely on factual information of a diverse kind, and to great persuasive effect.

Despite the fact that the opinion was a dissenting judgement, it has some key signifiers how Justice Bhagwati redeemed the judicial role from one bound by an invisible “judicial compulsion” to one who embraces the ‘human’ aspect of the judicial role. This minority judgment, perhaps more than any writing by Justice Bhagwati, is a signifier of envisaging a judicial role based on recognizing that *“as long as we are judges and not computers, an element of ourselves must inevitably and properly go into our decisions”*.³⁵ It would be instructive to note how self-aware Justice Bhagwati is when he notes that “Judges must also consider while deciding an issue of constitutional adjudication as to what would be the moral, social and economic consequences of a decision either way. The consequences of course do not alter the meaning of a constitutional or statutory provision but they certainly help to fix its meaning. (emphasis supplied). This acknowledgment of the real life impact of a judge’s decision is perhaps one of the most important chalking out of a juristic analysis not based on straitjacketed frameworks of assessing a judicial role.

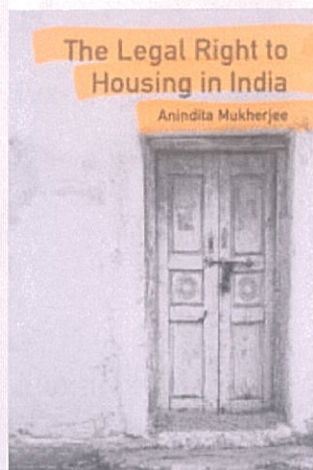
Perhaps it would be most appropriate to conclude by quoting Justice Bhagwati’s most remarkable writing in *Bachan Singh*:

“It is now recognised on all hands that judicial conscience is not a fixed conscience; it varies from judge to judge depending upon his attitudes and approaches, his predilections and prejudices, his habits of mind and thought and in short all that goes with the expression “social philosophy”. We lawyers and judges like to cling to the myth that every decision which we make in the exercise of our judicial discretion is guided exclusively by legal principles and we refuse to admit the subjective element in judicial decision making. But that myth now stands exploded and it is acknowledged by jurists that the social philosophy of the judge plays a not inconsiderable part in moulding his judicial decision and particularly the exercise of judicial discretion. There is nothing like complete objectivity

³⁵ “Infusing the Constitution with ‘An Ethic of Care’: The Humane Jurisprudence of Justice Albie Sachs”, in “Making the road by walking: The evolution of the South African Constitution” Narnia Bohler-Muller & Thobekile Zikhal, Pretoria University Law Press (2018). Available at: http://www.pulp.up.ac.za/images/pulp/books/legal_dialogues/making_the_road_by_walking/Chapter%207%20Making%20the%20Road.pdf

in the decision making process and especially so, when this process involves making of decision in the exercise of judicial discretion”

The Legal Right to Housing in India

[✓ Access](#)

Cited by 1

Anindita Mukherjee, *National Academy of Legal Studies and Research, Hyderabad, India*

Publisher: Cambridge University Press

Online publication date: April 2019

Print publication year: 2019

Online ISBN: 9781108757454

DOI: <https://doi.org/10.1017/9781108757454>

Subjects: Law: General Interest, Socio-Legal Studies, Law

Contents

Frontmatter

[✓ Access](#) [PDF](#)[Export citation](#)

pp i-iv

Dedication

[✓ Access](#) [PDF](#)[Export citation](#)

pp v-v

Epigraph

pp vi-vi

✓ Access [PDF](#)

[Export citation](#)

Contents

pp vii-viii

✓ Access [PDF](#)

[Export citation](#)

Foreword

pp ix-xvi

✓ Access [PDF](#)

[Export citation](#)

Acknowledgements

pp xvii-xviii

✓ Access [PDF](#)

[Export citation](#)

List of Abbreviations

pp xix-xx

✓ Access [PDF](#)

[Export citation](#)

List of Cases

pp xxi-xxii

✓ Access [PDF](#)

[Export citation](#)

List of Statutes

pp xxiii-xxvi

✓ Access [PDF](#)

[Export citation](#)

Introduction

pp 1-18

✓ Access [PDF](#)

[Export citation](#)

1 - The Act of Definition

pp 19-39

 [Access](#) [PDF](#)

[Export citation](#)

2 - The Indian State in Response to Housing Claims

pp 40-71

 [Access](#) [PDF](#)

[Export citation](#)

3 - Mapping the Legal Environment

pp 72-106

 [Access](#) [PDF](#)

[Export citation](#)

Conclusions

pp 107-114

 [Access](#) [PDF](#)

[Export citation](#)

Annexure 1 - Central Housing Law and Policy

pp 115-152

 [Access](#) [PDF](#)

[Export citation](#)

Annexure 2 - National Campaign for Housing Rights

pp 153-197

 [Access](#) [PDF](#)

[Export citation](#)

Annexure 3 - The National Right to Homestead Bill, 2013

pp 198-207

 [Access](#) [PDF](#)

[Export citation](#)

References

pp 208-215

 [Access](#) [PDF](#)

Index

☒ Access [PDF](#)

[Export citation](#)

22

GLOBAL INFORMATION SOCIETY WATCH 2019

Artificial intelligence: Human rights, social justice and development



ASSOCIATION FOR PROGRESSIVE COMMUNICATIONS (APC),
ARTICLE 19, AND SWEDISH INTERNATIONAL DEVELOPMENT COOPERATION AGENCY (SIDA)

Global Information Society Watch 2019



Global Information Society Watch 2019

Artificial intelligence: Human rights, social justice and development

Operational team

Valeria Betancourt (APC)
Alan Finlay (APC)
Mallory Knodel (ARTICLE 19)
Vidushi Marda (ARTICLE 19)
Maja Romano (APC)

Project coordination team

Valeria Betancourt (APC)
Cathy Chen (APC)
Flavia Fascendini (APC)
Alan Finlay (APC)
Mallory Knodel (ARTICLE 19)
Vidushi Marda (ARTICLE 19)
Leila Nachawati (APC)
Lori Nordstrom (APC)
Maja Romano (APC)

GISWatch 2019 advisory committee

Namita Aavriti (APC)
Rasha Abdul Rahim (Amnesty International)
Alex Comminos (Research ICT Africa)
Malavika Jayaram (Digital Asia Hub)
J. Carlos Lara (Derechos Digitales - América Latina)
Joy Liddicoat (Centre for Law and Emerging Technologies, University of Otago)
Andrew Lowenthal (EngageMedia)
Micaela Mantegna (Geekylegal/Machine Intelligence Lab, Center for Technology and Society, San Andres University)
Valeria Milanes (Asociación por los Derechos Civiles)

Project coordinator

Maja Romano (APC)

Editor

Alan Finlay (APC)

Assistant editor and proofreading

Lori Nordstrom (APC)

Publication production support

Cathy Chen (APC)

Graphic design

Monocromo

Cover illustration

Matías Bervejillo

We would like to extend a special note of thanks to a number of authors who have made ad honorem contributions to this edition of GISWatch. We gratefully acknowledge the following:

Philip Dawson and Grace Abuhamad (Element AI)
Anita Gurumurthy and Nandini Chami (IT for Change)
Rasha Abdul Rahim (Amnesty International)



APC would like to thank the Swedish International Development Cooperation Agency (Sida) and ARTICLE 19 for their support for Global Information Society Watch 2019.

Published by APC

2019

Printed in USA

Creative Commons Attribution 4.0 International (CC BY 4.0)

<https://creativecommons.org/licenses/by/4.0/>

Some rights reserved.

Global Information Society Watch 2019 web and e-book

ISBN 978-92-95113-13-8

APC Serial: APC-201910-CIPP-R-EN-DIGITAL-302

Disclaimer: The views expressed herein do not necessarily represent those of Sida, ARTICLE 19, APC or its members.



Independent; ARTICLE 19

Malavika Prasad and Vidushi Marda

www.article19.org

Introduction

Pune, a city of 6.4 million people in western India, is home to a smart sanitation project that aims at building resilient and sustainable sanitation solutions in the city. Artificial intelligence (AI) is one of the potentially transformative technologies currently being considered in this project.¹ Real-time collection and monitoring of data through sensors, as well as analytics and insights at scale, means that the use of AI systems can be beneficial.

Current data collection through sensors will impact the design and development of AI systems in the future. Questions of *how* this data is created, *where* it arises from, *what* types of analytics and insights are being recorded, *which* areas of work are made more efficient, and *who* benefits from smart sanitation remain to be answered.

This report aims to highlight the importance of situating AI systems in context by analysing how Pune's smart sanitation project interacts with the societal fabric within which it is being developed. We explore two pointed questions. First, what AI systems are planned to be deployed and how are they being designed and developed? And second, how does this impact caste and gendered systems of labour undergirding sanitation work in India?

Context

Pune has consistently ranked as one of India's top smart cities since the launch of the Smart Cities Mission (SCM).² In 2017, the Pune Smart City Development Corporation signed a memorandum of understanding with the University of Toronto and the Indian Institute of Technology (IIT) Bombay to use AI

to make it a truly smart city.³ This is in line with the National Strategy for AI, published by the National Institution for Transforming India (NITI Aayog) in June 2018, which identifies smart cities as a key area for AI intervention in India.⁴ In August 2017, Pune's Municipal Corporation announced plans to make Pune the world's first smart sanitation city.⁵

Pune's smart sanitation project lies in the intersection of five key imperatives of the Indian government. The first is the SCM, a centrally sponsored policy seeking to enhance 100 cities by improving the “quality of life” in a “sustainable environment” using “smart solutions”,⁶ while driving economic growth.⁷ Smart solutions envisaged under this policy range from e-governance solutions such as e-service delivery and video crime monitoring, energy management solutions such as smart meters and harnessing renewable energy, and waste management solutions such as the circular use of waste as energy and compost and the reuse and recycling of water.⁸ The second is the Swachh Bharat Mission (SBM), also a centrally sponsored policy, which aims to achieve safe, sustainable, cost-effective and “universal sanitation coverage”, making India “open defecation free”⁹ by October 2019. The third is Digital India, an initiative that is closely related to SCM,¹⁰ and is geared towards providing digital infrastructure to every citizen as a core utility, and

1 Toilet Board Coalition. (2018). *Smart Sanitation City*. https://www.toiletboard.org/media/45-TBC_2018PuneReport_11202018.pdf?v=1.0.1

2 Ministry of Housing and Urban Affairs, Government of India. (2016). *City Challenge*. http://smartcities.gov.in/content/city_challenge.php?page=winning-city-proposals-in-round-1-of-city-challenge.php; also see [http://smartcities.gov.in/upload/city_challenge/58dfa4cb13064582318f5d6d8eRankingofSmartCities\(1\).pdf](http://smartcities.gov.in/upload/city_challenge/58dfa4cb13064582318f5d6d8eRankingofSmartCities(1).pdf)

3 Smart Cities Council. (2017, 5 December). AI to make Pune a truly “Smart City”. <https://india.smartcitiescouncil.com/article/ai-make-pune-truly-smart-city>

4 NITI Aayog. (2018). National Strategy for Artificial Intelligence #AIFORALL. https://www.niti.gov.in/writereaddata/files/document_publication/NationalStrategy-for-AI-Discussion-Paper.pdf

5 Express News Service. (2017, 1 September). PMC partners with TBC to become ‘Smart Sanitation City’. *The Indian Express*. <https://indianexpress.com/article/india/pmc-partners-with-tbc-to-become-smart-sanitation-city-4823309>

6 Guideline 2.3, Ministry of Urban Development, Smart City Mission Statement and Guidelines, 2015 (“SCM Guidelines”).

7 SCM Guideline 2.6.

8 SCM Guideline 2.5.

9 The term was defined as follows: “ODF is the termination of faecal-oral transmission, defined by: 1) no visible faeces found in the environment/village; and 2) every household as well as public/community institutions using safe technology option for disposal of faeces.” See Government of India Letter no.@-11011/3/2015-SBM dated 9 June 2015.

10 IANS. (2017, 16 March). Digital India initiatives playing major role in smart cities mission. *The Financial Express*. <https://www.financialexpress.com/india-news/digital-india-initiatives-playing-major-role-in-smart-cities-mission/590381>

transforming India into a digitally empowered society and knowledge economy.¹¹ The fourth is the National Urban Innovation Stack (NUIS), a central government initiative using layered digital infrastructure to provide all stakeholders with “digital tools and platforms, standards, specifications and certifications, and enable greater coordination and integration amongst them.”¹² The fifth is the National Strategy for Artificial Intelligence,¹³ which contemplates the need for AI to propel inclusive economic growth and social development, with smart cities as a key area of AI intervention.

The government views the convergence of these policy imperatives as desirable.¹⁴

Our report focuses on sanitation workers – largely women from Dalit communities¹⁵ – who are hired by the municipality as labourers through a contractor and therefore often fall outside of labour laws.¹⁶ Sanitation work refers broadly to all *safai kam* or “cleaning work” ranging from sweeping streets, collecting and transporting garbage, to cleaning sewers.¹⁷ Cleaning workers are considered polluted and impure by upper castes, due to which Dalit communities,¹⁸ treated as ordained by birth for such labour, are excluded from other occupational opportunities.¹⁹ That sani-

tation workers are largely Dalit women means that they are marginalised in an altogether qualitatively different manner: by upper-caste women and men on account of being Dalit,²⁰ and by Dalit men on account of being women.²¹

Some states have introduced government employment for sanitation work, open to persons from all castes. Non-Dalit candidates have filled about half of these posts²² because of the economic benefits and job security in government posts.²³ However, some upper-caste candidates use these posts as a stepping stone to permanent posting, after which they transfer to other governmental departments.²⁴ As succour to Dalit workers who have been dispossessed by non-Dalits, some states have begun to mandate that Dalit communities shall be prioritised for sanitation posts.²⁵ Nevertheless, governmental intervention in this realm has further marginalised Dalits, without undoing the stigma attached to cleaning labour. The key issue that states have failed to address is that Dalit workers who used to earn a living from sanitation work are unable to access alternative opportunities for work.²⁶

Indian law forbids employment and even contractual engagement for one type of

11 Press Information Bureau, Government of India. (2014, 20 August). *Digital India – A programme to transform India into digital empowered society and knowledge economy*. <https://pib.gov.in/newsite/PrintRelease.aspx?relid=108926>

12 Ministry of Housing and Urban Affairs. (2019). *National Urban Innovation Stack*. https://smartnet.niua.org/sites/default/files/resources/national_urban_innovation_stack_web_version.pdf

13 NITI Aayog. (2018). Op. cit.

14 SCM Guideline 14.2.

15 Kadlak, H., Salve, P. S., & Karwade, P. (2019, 19 March). Intersectionality of Caste, Gender and Occupation: A Study of *Safai Karamchari* Women in Maharashtra. *Contemporary Voice of Dalit*.

16 Yadavar, S. (2017, 17 June). Sanitation Workers Clean Our Cities But They Are Denied Even Minimum Wage. *India Spend*. <https://archive.indiaspend.com/indias-great-challenge-health-sanitation/sanitation-workers-clean-our-cities-but-they-are-denied-even-minimum-wage-72329/>; Fernandes, S. (2019, 4 March). How Mumbai's Sanitation Workers Fought the Municipal Corporation - and Won. *The Scroll*. <https://scroll.in/article/914733/how-mumbais-sanitation-workers-fought-the-municipal-corporation-and-won>

17 Kadlak, H., Salve, P. S., & Karwade, P. (2019, 19 March). Op. cit.

18 The Constitution of India abolishes the practice of untouchability and requires parliament to punish the enforcement of disabilities arising from untouchability (Article 17). To this end, the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989, criminally punishes practices arising from the system of untouchability. Nonetheless, untouchability manifests in new ways.

19 B. R. Ambedkar, political theorist, chairman of the Drafting Committee of the Indian Constitution and a towering caste scholar has this to say: “[I]t is clear that according to the Hindu Shastras and the Hindu notions, even if a Brahmin did scavenging, he would never be subject to the disabilities of one who is born a scavenger. In India, a man is not a scavenger because of his work. He is a scavenger because of his birth irrespective of the question whether he does scavenging or not.” Ambedkar, B. R. (1945). *What Congress and Gandhi Have Done to the Untouchables*. Bombay: Thacker and Co.

20 The caste system is built on the subjugation of all women, as Ambedkar had argued as early as 1916. However, the feminist movement in India has not successfully reckoned with this reality and has been criticised for engaging in advocacy using an upper-caste lens. See Ambedkar, B. R. (1917). *Castes in India: Their Mechanism, Genesis and Development*. *Indian Antiquary*, XLI. http://www.columbia.edu/itc/mea/ac/pritchett/ooambedkar/txt_ambedkar_castes.html

21 The separability of caste and sex is easy for those who are subordinated on the basis of one marker and privileged by the other (such as upper-caste women), but is virtually impossible for those who are either privileged (upper-caste men) or subordinated by both markers (Dalit women). See MacKinnon, C. (2016). *Sex Equality*. (Third edition). Foundation Press.

22 Tripathi, T. (2012). Safai Karmi Scheme of Uttar Pradesh: Caste Dominance Continues. *Economic and Political Weekly*, 47(37). <https://www.epw.in/journal/2012/37/commentary/safai-karmi-scheme-uttar-pradesh.html>

23 Tripathi, T. (2015). Safai Karmis of Uttar Pradesh. *Economic and Political Weekly*, 50(6). <https://www.epw.in/journal/2015/6/reports-states-web-exclusives/safai-karmis-uttar-pradesh.html>

24 Roytalukdar, R. (2019, 28 January). #Republic of Grit: Who gets Coveted Government Sanitation Jobs in Rajasthan? *The Wire*. <https://thewire.in/caste/republic-of-grit-who-gets-coveted-government-sanitation-jobs-in-rajasthan>

25 Jain, S. (2019, 29 April). Manual Scavengers in Rajasthan Struggle to Be Recruited as Govt Sanitation Workers. *The Wire*. <https://thewire.in/labour/manual-scavengers-in-rajasthan-struggle-to-be-recruited-as-govt-sanitation-workers>

26 There is some evidence that the State of Mizoram has successfully dislodged the stigma attached to cleaning work by hiring tier four government employees who are required to serve in turns as sanitation workers, peons, office assistants, etc. Pisharoty, S. B. (2019, 20 March). For Sanitation Workers in Aizawl, Stigma Isn't a Problem. *The Wire*. <https://thewire.in/rights/for-sanitation-workers-in-aizawl-stigma-isnt-a-problem>

sanitation work called “manual scavenging”²⁷ – the manual cleaning of faecal matter – owing to the caste-based origin of confining this labour to only certain Dalit communities.²⁸ However, the prohibition on such hiring is lifted if protective gear or devices are provided to the workers.²⁹ From a human rights perspective, as Special Rapporteur Leo Heller reported to the 39th session of the UN Human Rights Council,³⁰ protective gear does not eliminate the stigma associated with manual scavenging or cleaning labour, which continues to be the only occupational opportunity available to 1.3 million Dalits in India.³¹ While “eradication of manual scavenging” was stated as a policy imperative in the SCM guidelines,³² further details were not forthcoming until 2017.³³ The scant guidance in the revised 2017 guidelines does not have anything to say on the varieties of sanitation work outside manual scavenging.³⁴

Designing and developing Pune’s smart sanitation: A closer look

The Union Ministry of Urban Development stated in May 2016 that it did not plan to privatise the management of basic utilities such as sewage treatment in smart cities.³⁵ However, private sector involvement is key to the financing of a smart city plan

under the SCM.³⁶ In Pune, the “Smart Sanitation Economy” was the vision³⁷ of the Toilet Board Coalition (TBC) – a business-led partnership³⁸ that is offering technical assistance to the Pune Smart City and the Pune Municipal Corporation (PMC).³⁹ The “Smart Sanitation Economy” aims to lower costs of delivering sanitation by tapping a yet untapped market of health care and other services around the sanitation system.⁴⁰ The other two mutually reinforcing “economies” of interest for the TBC are the “Toilet Economy”, comprising businesses looking to buy and sell toilet products and services, and the “Circular Sanitation Economy”, which replaces traditional waste management practices, and comprises businesses capturing toilet resources such as urine and faecal matter for producing fuel, reusable water, compost and organic fertilisers, bio-plastics, etc.⁴¹

Our research and interviews indicate that in the “Toilet Economy”, toilets will be privately established and operated. Sanitation workers will thus be hired by private entities, either as employees or as contract labourers, and it is unclear what legal regime will regulate their hire.⁴²

Democratic accountability and responsiveness

The question of democratic accountability in smart cities generally is vexing. In the Pune case, the Pune Smart City is a special purpose vehicle (SPV) – a limited company held by the state and the PMC⁴³ – to whom rights, obligations and powers of the PMC are to be delegated.⁴⁴ However, this requirement does not convey the exact terms of the relationship between the PMC and the SPV, or delineate

27 Section 5 of the Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013 (2013 Act).

28 “Manual scavenging” is defined as the manual “cleaning, carrying, disposing of, or otherwise handling in any manner, human excreta” in any insanitary latrine or open drain or pit or railway track or other such spaces notified by the States or Central Government, under Section 2(g) of the 2013 Act.

29 See Explanation (b) of Section 2(g) of the 2013 Act. It is worth noting that those sanitation workers hired for manual scavenging with protective gear, if hired as contract labourers, continue to remain outside labour law protections.

30 Report of the Special Rapporteur on the human rights to safe drinking water and sanitation on his mission to India from 27 October to 10 November 2017, 6 Jul 2018, A/HRC/39/55/Add.1, Paragraph 25.

31 International Dalit Solidarity Network, Manual Scavenging. <https://idsn.org/key-issues/manual-scavenging/>

32 Guidelines for SBM (Gramin) 2014.

33 The Revised Guidelines for SBM (Urban), 2017 state in one line: “The State Governments shall pursue the following: i. All manual scavengers in urban areas are identified, insanitary toilets linked to their employment are ii. upgraded to sanitary toilets, and the manual scavengers are adequately rehabilitated.” Para 6.4.14 of the Revised Guidelines for SBM (Gramin), 2017, merely forbid the construction of insanitary latrines and mandate conversion of existing ones to sanitary latrines. See also Updated Guidelines for SBM (Gramin), 2019.

34 See also Interview of Bezwada Wilson, National Convenor of the Safai Karmachari Andolan and Beena Pallical, Chair of the National Campaign for Dalit Human Rights by Newslandry, November 2017. <https://www.youtube.com/watch?v=GjqT7rwwtcY&t=625s>

35 Lok Sabha Unstarred Question No. 2964, to be answered on 11 May 2016.

36 SCM Guideline 9.1.2.

37 Toilet Board Coalition. (2018). Op. cit.

38 The TBC is a “business-led partnership and platform” connecting “private, public and non-profit sectors” towards achieving Sustainable Development Goal 6 for universal access to sanitation. <https://www.toiletboard.org/about>

39 Guideline 6.3.2 of the SCM Guidelines defines Handholding Agencies for the proposal stage of the Smart City Mission. The Toilet Board Coalition was engaged well into Pune’s proposal being selected in the SCM.

40 Toilet Board Coalition India Roundtable, 15 November 2017. <https://www.youtube.com/watch?v=VUKB1WDJBjQ>

41 Toilet Board Coalition. (2018). Op. cit.

42 Since the regulation of contract workers is less onerous than that of workers hired directly as employees, most establishments prefer to hire contract workers. If more than 20 workers are hired on contract, the Contract Labour Act, 1970, will regulate their hire. However, in cities such as Hyderabad, contractors have evaded this regulation by offering less than 20 workers for hire. Other cities have followed suit. See Yadavar, S. (2017, 17 June). Op. cit.

43 SCM Guideline 10.2 requires that the SPV be held in a 50:50 ratio by the State and the ULB in question.

44 Para 4, Annexure 5, SCM Guidelines.

the hierarchy of authorities.⁴⁵ Members of the Pune Smart City are largely bureaucrats, and to a lesser extent politicians, assisted by consultants for technical support, monitoring and evaluation, fund-raising from the market, as well as procuring implementation agencies.⁴⁶ Such conferral of decision-making powers in unelected bureaucrats raises questions about the democratic legitimacy of the smart city.⁴⁷

Scholars have also expressed concerns about the class of citizens who will be consulted in the design of smart cities.⁴⁸ What demographics are represented at Pune Smart City's "Citizen Engagement meetings" remains to be studied. At least two such meetings for discussing smart city projects were conducted in housing-societies in the local area chosen for smart city development,⁴⁹ which comprise citizens with home-owning or renting capabilities. We are unable to find evidence of the attendance of citizen labourers servicing the smart city. The absence of participatory planning, failure to account for all citizens' needs or conduct social audits has effaced the "citizen-government interface" even in past urban-renewal missions in India.⁵⁰ India needs to reckon with this deficit in the democratic responsiveness of smart cities to citizen residents.

The deployment of "smart" solutions such as sensors in internet of things (IoT)-enabled toilets as a business use case – designed to maximise efficiency – as opposed to a public sector use case that accounts for human costs, further reduces democratic responsiveness in smart cities. The central concern is that privately deployed efficiency maximising systems need not reckon with human rights baselines that public sector systems do, such as, in

this case, the dignity of workers who are confined to such labour owing to their caste identity.

The TBC's approach is concerned with the citizen toilet users at its core, because it is a business-led coalition attempting to tap a customer base of people without toilet access.⁵¹ However, the state (i.e. the Pune Smart City) is constitutionally required to be accountable to all citizens, including citizen labourers. What instead appears to be happening is a dispersion of governmental power across multiple private, democratically unaccountable actors – from toilet operators to the toilet business in question – who manage and discipline sanitation workers to provide more efficient maintenance.⁵² Since the Pune SCM's toilets will be privately operated, it is unclear how the toilet businesses will be held to norms of constitutional accountability. For instance, what legal recourse exists for sanitation workers who have been displaced from their previous jobs in the municipality's public toilets, in areas that now have privately operated "smart toilets"? Will toilet businesses running smart toilets be held to the constitutional obligation not to entrench caste-based sanitation work, or to ensure sanitary work conditions? Will the Pune SCM be truly democratically responsive to all its citizens, including citizen labourers from marginalised groups?

Sensors: Governmentality and unrepresentative training data

Sensors⁵³ form a fundamental building block of Pune's smart sanitation project by "enabling the collection of new data, feeding new insights, and

45 Anand, A., Sreevatsan, A., Taraporevala, P. (2018). *An Overview of the Smart Cities Mission in India*. New Delhi: Centre for Policy Research. <https://cprindia.org/system/tdf/policy-briefs/SCM%20POLICY%20BRIEF%2028th%20Aug.pdf?file=1%26type=node%26id=7162>; also see Taraporevala, P. (2017, 6 September). How Smart Cities Mission can help municipalities to improve governance. *The Hindustan Times*. <https://www.hindustantimes.com/opinion/how-smart-cities-mission-can-help-municipalities-to-improve-governance/story-mTVzuXWofuiVlgL7A9cXPK.html>

46 <https://punesmartcity.in/about-pscdcl>

47 Anand, A., Sreevatsan, A., Taraporevala, P. (2018). Op cit.

48 Ibid. Also see Hoelscher, K. (2016). The evolution of the smart cities agenda in India. *International Area Studies Review*, 19(1), 28-44.

49 Pune Smart City. (2018, 19 December). Pune Smart City continues with its Citizen Engagement Program campaign in Housing Societies to build awareness regarding the mission. <https://punesmartcity.in/संविधान-एंगेजमेंट-कार्यक/>; Pune Smart City. (2018, 19 November). Pune Reaches Out To Housing Societies for Awareness Through Citizens Engagement Program, <https://punesmartcity.in/पुणे-स्मार्ट-संविद्या-प/>

50 Roy, S. (2016). The Smart City Paradigm in India: Issues and Challenges of Sustainability and Inclusiveness. *Social Scientist*, 44(5-6), 29-48.

51 Cheryl Hicks, executive director of the TBC, stated: "We are a corporate-led coalition started because companies saw a business opportunity in sanitation. The 2.3 billion people without toilets are customers that they don't have." When asked about the large numbers of the urban poor, she responded: "That is why the companies formed the coalition, because the people without toilets, the poor, are customers they don't have." Civil Society. (n.d.). 'Sanitation is the fortune at the bottom of the toilet'. <https://www.civilsocietyonline.com/business/sanitation-is-the-fortune-at-the-bottom-of-the-toilet>

52 Foucault, M. (1978). Lectures Three and Four. In M. Senellart (Ed.), *Security, Territory, Population: Lectures at the Collège de France 1977-1978*. Palgrave Macmillan. See also other Foucauldian critiques of private sector technological solutions in smart cities such as Vanolo, A. (2014). Smartmentality: The Smart City as Disciplinary Strategy. *Urban Studies*, 51(5), 883-898; Klausner, F., Paasche, T., & Söderström, O. (2014). Michel Foucault and the Smart City: Power Dynamics Inherent in Contemporary Governing through Code. *Environment and Planning D: Society and Space*, 32(5), 869-885.

53 A sensor is a machine that observes the environment and converts physical quantity into signals. The physical quantities that can be measured are numerous – including air quality, blockages, temperature, movement, humidity, etc. For a more detailed explanation on sensors, see: 3Bplus. (2018, 4 November). How do smart devices work: sensors, IoT, Big Data and AI. <https://3bplus.nl/how-do-smart-devices-work-sensors-iot-big-data-and-ai>

creating Sanitation Intelligence.”⁵⁴ At least one smart solution in the Pune case uses sensor data for building self-cleaning toilets. The GARV toilets,⁵⁵ some of which are installed in Pune, have sensors triggering floor and toilet-pan washing mechanisms.⁵⁶ However, other smart solutions appear to rely on transferring sensor data to a control centre to enable local municipal authorities that take care of urban planning and resource management – usually called Urban Local Bodies (ULBs) or the PMC in this case – to make data-driven decisions. Regardless of the solution, one must ask what data is being collected, what decisions will be made based on such data, and by whom.

When data from sensors is assimilated in the command and control centre, the centre becomes a one-stop-shop for data acquisition, assimilation and analytics. The end result is a digital map of the entire city.⁵⁷ According to the TBC Interim Report on the progress in the Pune smart sanitation project, as of November 2018, “sensors” include footfall sensors to understand user numbers, sensors in treatment plants to understand flow and quality of toilet resources, and sensors within a toilet to detect pathogens and other indicators.⁵⁸ Data from these sensors will be used to improve efficiency and management of operations, including managing peak usage times, and disease prevalence in communities.

The TBC Interim Report suggests that smart public toilets will produce a layer of “city intelligence” on “operational status of toilets triggering maintenance and cleaning”, which will be used by ULBs to “adjust stockage and deploy maintenance.” Likewise, smart public toilets will also produce a layer of “business intelligence” on “scheduling maintenance and customer usage patterns”, which will be used by the toilet-operating businesses to improve “consumer communications” as well as by the on-ground operators to “optimize service levels.”⁵⁹

This is ostensibly a laudable development for citizen toilet users, especially considering that the TBC’s aim in Pune is to develop “new models” in products, services and infrastructure, to “scale up

access, usage and behaviour change” in India.⁶⁰ A closer look, however, indicates that citizen labourers do not figure anywhere in this scheme – an issue of utmost gravity given the caste and gendered nature of sanitation work in India.

As mentioned, sensor data used as envisaged aids the ULB, the business or on-ground operators to monitor the condition of toilets for either deploying maintenance or optimising service delivery. We worry that this will amount to a round-the-clock surveillance of sanitation workers tasked with the maintenance and cleaning of toilets.⁶¹ The dispersion of governmental power across multiple private, democratically unaccountable actors – from toilet operators to the toilet business in question – for managing and disciplining sanitation workers⁶² to provide more efficient maintenance, further multiplies the avenues for surveilling the sanitation workers.⁶³

In addition to the worry that sanitation workers will be subjected to a top-down surveillance⁶⁴ aimed at more efficient management of the smart toilets, we also worry that their needs will not be captured in the data sets that will be created using

54 Toilet Board Coalition. (2018). Op. cit.

55 <https://www.garvtoilets.com/about.html>

56 Dietvorst, C. (2016, 6 October). Indestructible and smart: public toilet innovation in India. *IRC Wash Systems*. <https://www.ircwash.org/blog/indestructible-and-smart-public-toilet-innovation-india>

57 Ministry of Housing and Urban Affairs. (2018). *ICCC Maturity Assessment Framework Toolkit*. https://smartnet.niua.org/sites/default/files/resources/iccc_maturity_assessment_framework_toolkit_vf211218.pdf.

58 Toilet Board Coalition. (2018). Op. cit.

59 Ibid.

60 Civil Society. (n.d.). Op. cit.

61 The SBM has come under heavy criticism similarly for attempting to enforce more stringent cleaning obligations on already exploited sanitation labourers from the Dalit communities, by valorising the service they provide without either ensuring alternate occupational opportunities for Dalits or destigmatising sanitation work by attracting an upper-caste work force. See Teltumbde, A. (2014). No Swachh Bharat Without Annihilation of Caste. *Economic and Political Weekly*, 49(45). <https://www.epw.in/journal/2014/45/margin-speak/no-swachh-bharat-without-annihilation-caste.html>; Gatade, S. (2015). Silencing Caste, Sanitising Oppression: Understanding Swachh Bharat Abhiyan. *Economic and Political Weekly*, 50(44). <https://www.epw.in/journal/2015/44/perspectives/silencing-caste-sanitising-oppression.html>

62 Foucault, M. (1978). Op. cit. See also other Foucauldian critiques of private sector technological solutions in smart cities such as Vanolo, A. (2014). Op. cit.; Klausner, F., Paasche, T., & Söderström, O. (2014). Op. cit.

63 See Levy, K. (2015). The Contexts of Control: Information, Power, and Truck-Driving Work. *The Information Society*, 31(2), 160-174, in which she finds that “[t]ruckers, a spatially dispersed group of workers with a traditionally independent culture and a high degree of autonomy, are increasingly subjected to performance monitoring via fleet management systems that record and transmit fine-grained data about their location and behaviors” and further that “managers make use of electronic monitoring (and the data it generates) to control workers by making their day-to-day practices more visible and measurable.” Noopur Raval notes regarding Levy’s findings that the worker is “no longer accountable to a single or limited set of entities (human boss, customer) and is now, instead, constantly being monitored” and that such “fine-grained surveillance of truckers’ behaviour [...] also causes a fundamental shift in how efficiency is determined and who gets to determine how to structure the organization of daily work in order to maximize overall work done.” Raval, N. (2019). *Advances in Computing and the Future of Work*. (Unpublished draft.) https://www.academia.edu/38459868/TLSDraftPaper_Raval.docx

64 Zuboff, S. (2019). *The Age of Surveillance Capitalism*. London: Profile Books.

sensors (i.e. data collection from the ground up). Sensors at present are collecting data only on the use of public toilets (including footfall, frequency of usage, air quality, etc.) and the state of sewer water treatment plants (to manage flow, blockages and leaks). Sanitation workers are conspicuously absent from these data sets, and consequently, from the digital map of the smart city. In other words, no data is collected for the potential of alleviating the work load of sanitation workers, minimising sanitary hazards by providing protective equipment and gear, or enhancing the sanitary conditions of their labour.

The digital map of the city is thus selectively built, with dark spots in data sets overlapping almost entirely with marginalised groups. As data sets embed prevalent intersectional caste, class and gender biases,⁶⁵ the digital map of Pune's smart city will ignore and thus doubly marginalise already underrepresented groups. Sensors, being one of the primary points of data collection within the smart sanitation system, will feed data directly into the design and development of potential AI systems. AI applications that focus on gaining insights from data will use machine learning – a process of generalising outcomes through examples.⁶⁶ This means that data sets have a direct and profound impact on *how* an AI system works – it will necessarily perform better for well-represented examples, and poorly for those that it is less exposed to.⁶⁷ The marginalising of sanitation workers no doubt predates the use of technology in sanitation. It is precisely that marginalisation that will be further normalised and solidified through dark spots in data sets.⁶⁸ Communities at the margins of data collection are often those who need to be counted most – making the nature of data set creation crucial.

This seems to be a pervasive blind spot across government initiatives. The NUIS, for instance, contemplates empowering field-level employees by providing tools and knowledge for their everyday work, and providing city administrators with

data and intelligence. It is not clear who field-level employees are. Given that they are expected to have formalised tasks and deliverables,⁶⁹ it appears that they are operators of infrastructure, and not the workers hired by the operators. Consequently, we worry that while improving citizens' ease of living is a purported aim of the NUIS, citizen labourers including sanitation workers and their needs are not contemplated in the NUIS' core data infrastructure.

Conclusions

Smart cities are currently envisaged and framed as a business opportunity. In the process, we have lost sight of the responsibility of the state in smart cities. In studying publicly available documents on the SCM, SBM, Digital India, NUIS and the national strategy for AI as applied to the Pune smart sanitation project, we find that the needs and perspectives of only citizen toilet users and citizen residents are reflected in the development of the smart sanitation project. The design of "smart" solutions, that are pervasive and IoT-based, indicates a dispersion of governmental power across several private, democratically unaccountable actors, to better discipline and manage citizen workers servicing the smart city.

Consequently, while the rights and ease of living of citizens are purportedly a central concern of smart cities, not *all* citizens' needs and perspectives are reflected in designing "smart" solutions. The turn to technological solutions that are designed, developed and deployed by private actors, as a substitute for public services and obligations, benefits the citizen consumer but further marginalises the citizen worker, thus aggravating extant worries on democratic accountability and responsiveness of smart cities in India. The SCM generally also bears testimony to this fact, by permitting area-based development that encompasses less than 10% of the Indian population.⁷⁰ Studies have found that lower-income groups are suspicious of smart city initiatives as they view it as a vehicle for gentrification and driving them away from certain areas in cities.⁷¹

Examining the crucial data stage of Pune's smart sanitation project, we learn that the design of data sets at the bedrock of the Pune Smart City

65 Marda, V. (2018). Artificial Intelligence Policy in India: A Framework for Engaging the Limits of Data-Driven Decision-Making. *Philosophical Transactions of the Royal Society A: Mathematical, Physical and Engineering Sciences*, 376. <https://doi.org/10.1098/rsta.2018.0087>

66 Surden, S. (2014). Machine Learning and the Law. *Washington Law Review*, 89(1).

67 Lerman, J. (2013). Big Data and Its Exclusions. *Stanford Law Review Online*. <https://www.stanfordlawreview.org/online/privacy-and-big-data-big-data-and-its-exclusions>

68 Crawford, K. (2013, 10 May). Think Again: Big Data. *Foreign Policy*. https://www.foreignpolicy.com/articles/2013/05/09/think_again_big_data.

69 Ministry of Housing and Urban Affairs. (2019). Op. cit.

70 Housing and Land Rights Network. (2018). *India's Smart Cities Mission: Smart for Whom? Cities for Whom?* New Delhi: Housing and Land Rights Network.

71 Anand, T., et al. (2018). *Smart City Mission in Pune*. On file with authors.

are also likely to be unrepresentative and embedded with bias. Decisions made at this stage undergird how systems function, define their goals and parameters for success, and influence the ways in which systems can be used. It is important for data collection and creation efforts within the Pune Smart City, therefore, to work on being inclusive and non-discriminatory throughout the process of building “smart” systems, not just at the stage of outcomes.

One overarching learning from studying the disparate impact of the above policies on Dalit women sanitation workers is that the condition of the most marginalised citizen groups ought to be at the centre when designing policies and initiatives. While the potential of AI systems to transform Pune’s sanitation crisis is deliberated upon aggressively by a variety of stakeholders, current debates must also focus on where systems are deployed, how systems impact the marginalised, and what axes of power these systems entrench.

Action steps

The following lessons can be drawn from the smart sanitation project in Pune:

- Centre the perspectives of those persons and communities lying at the intersection of many axes of disadvantage, such as caste, class, gender and ability, prior to and while designing policy, instead of studying social impact after the fact.
- Be critical of AI as a socio-technical and not just technical system, i.e. do not only worry about accuracy, but critique the very existence of systems, their placement, and their beneficiaries.
- Focus on bringing about transparency in government procurement of privately developed technology for public service delivery. This is one of the only ways in which the constant obsession with the “business case” for programmes will be combated.

Artificial intelligence: Human rights, social justice and development

Artificial intelligence (AI) is now receiving unprecedented global attention as it finds widespread practical application in multiple spheres of activity. But what are the human rights, social justice and development implications of AI when used in areas such as health, education and social services, or in building “smart cities”? How does algorithmic decision making impact on marginalised people and the poor?

This edition of Global Information Society Watch (GISWatch) provides a perspective from the global South on the application of AI to our everyday lives. It includes 40 country reports from countries as diverse as Benin, Argentina, India, Russia and Ukraine, as well as three regional reports. These are framed by eight thematic reports dealing with topics such as data governance, food sovereignty, AI in the workplace, and so-called “killer robots”.

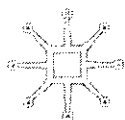
While pointing to the positive use of AI to enable rights in ways that were not easily possible before, this edition of GISWatch highlights the real threats that we need to pay attention to if we are going to build an AI-embedded future that enables human dignity.

GLOBAL INFORMATION SOCIETY WATCH

2019 Report

www.GISWatch.org





Recognising Human Rights in Different Cultural Contexts The United Nations Convention on the Rights of Persons with Disabilities (CRPD)

Edited by
Emily Julia Kakoullis
Kelley Johnson

palgrave
macmillan

Contents

1	Introduction	1
	<i>Emily Julia Kakoullis and Kelley Johnson</i>	
Part I	Culture, Disability and the CRPD	17
2	Legal Culture and the CRPD	19
	<i>Gerard Quinn</i>	
3	Anthropology, Disability and the CRPD	45
	<i>James G. Rice</i>	
4	Recognising Cultural Diversity: Implications for Persons with Disabilities	63
	<i>Kelley Johnson</i>	
5	A Personal Reflection on Indigeneity, Colonisation and the CRPD	79
	<i>Huhana Hickey</i>	

Part II	The Ratification Process: To Be or Not to Be?	95
6	The Failure of the United States to Ratify the CRPD <i>Arlene S. Kanter</i>	97
7	The Long Road to Ratification: Ireland and the CRPD <i>Eilíonóir Flynn</i>	133
8	A Consultative Culture? The Ratification Process for the CRPD in Cyprus <i>Emily Julia Kakoullis</i>	157
9	A Janus-Faced Affair: Sri Lanka's Ratification of the CRPD <i>Dinesha Samararatne</i>	179
Part III	Making Disability Human Rights Happen? Cultural Challenges to Implementing the CRPD	201
10	The 'Transposition' of Article 12 of the CRPD in China and Its Potential Impact on Chinese Legal Capacity Law and Culture <i>Huang Yi</i>	203
11	Implementation of Article 19 of the CRPD in Hungary and Its Impact on the Deinstitutionalisation Process So Far <i>Magdi BIRTHA</i>	227
12	Implementing Article 19 of the CRPD in Nordic Welfare States: The Culture of Welfare and the CRPD <i>Ciara Brennan and Rannveig Traustadóttir</i>	257

13	Article 30 of the CRPD as a Vehicle for Social Transformation: Harnessing the CRPD's Potential for Persons with Intellectual Disabilities	269
	<i>Matthew S. Smith and Michael Ashley Stein</i>	

Part IV	Monitoring the CRPD: Resolving Conflicting Interests?	295
----------------	--	-----

14	Was Ratification of the CRPD the High Watermark for United Kingdom Disability Rights? Ten Years of Monitoring Implementation of the CRPD	297
	<i>Neil Crowther and Liz Sayce OBE</i>	

15	The Role of Disabled People's Organisations in Promoting the CRPD in Indonesia	333
	<i>Dina Afrianty</i>	

✓ 16	The Process of State Party Reporting to the CRPD Committee: The Indian Experience	353
	<i>Amita Dhanda</i>	

17	Conclusion	377
	<i>Kelley Johnson and Emily Julia Kakoullis</i>	

Index	387
--------------	-----

(44)
Nilika Mehrotra *Editor*

Disability Studies in India

Interdisciplinary Perspectives

 Springer

Contents

1	Situating Disability Studies: A Prolegomenon	1
	Nilika Mehrotra	
Part I Epistemologies and Representations		
2	Decolonising Disability Studies? Developing South Asia-Specific Approaches to Understanding Disability	25
	James Staples	
3	Disorder, Disability, Difference: (Re)presenting Autism in India	43
	Shubhangi Vaidya	
4	Disability and Public Spaces: Universal Design Approaches	61
	Shilpa Das	
5	Ignorance of Disability: Some Epistemological Questions	75
	Anita Ghai	
6	Rethinking Monsters: Teaching Disability Studies Through History and the Humanities	93
	Shilpaa Anand	
Part II Policy and Institutionalisation		
7	Service and Knowledge: The Emergence of Disability Studies Extension	111
	Tanmoy Bhattacharya	
8	Disability Education at Lady Irwin College, University of Delhi	133
	Neerja Sharma	

9	Establishing a Disability Studies Centre in a Law University: Recounting the CDS NALSAR Experience	147
	Amita Dhanda	
10	Mapping Disability Studies Programmes in India: A Case of Hyderabad, Telangana	167
	Nilika Mehrotra and Ritika Gulyani	
11	Disability Social Work Education: Emerging Trajectory in India	187
	Srilatha Juvva	
 Part III Academia—Activism Interface: Enabling Practices		
12	Resisting Dominant Construction of Blindness and the Genesis of Disability Studies in the University of Delhi: A Historical Context	207
	Jagdish Chander	
13	Emancipating the Lives of Persons with Disabilities: Potential for Contributions by Disability Studies	223
	Deepa Sonpal and Vanmala Hiranandani	
14	The Right to Work for Persons with Disability in India: A Critical Disability Theory Perspective	243
	Nimushakavi Vasanthi	
15	‘Encounters’ with Disabled People: Concerns from Field Work Settings	261
	Mahima Nayar	
16	Examining the Question of Deaf Education within Disability Studies in Delhi, India	277
	Ritika Gulyani	
17	Examining the Experience, Barriers and Enabling Measures for Visually Impaired Visitors in Heritage Sites—A Study in the Indian Context to Enhance Accessibility and Inclusion	295
	Kavita Murugkar, Anurag Kashyap and Abir Mullick	

(145)
Nilika Mehrotra *Editor*

Disability Studies in India

Interdisciplinary Perspectives

 Springer

Chapter 14

The Right to Work for Persons with Disability in India: A Critical Disability Theory Perspective



Nimushakavi Vasanthi

Abstract The UNCRPD sets out the right to work and employment under Article 27 as including the right against discrimination and the right to just and favourable conditions of work. The paper draws upon decisions from the High Court's and the Supreme Court on the Indian Constitution and Labour Legislation, as well as schemes under Central and State Governments to critically examine how the Indian legal system responds to issues of discrimination and the right to just and favourable conditions of work of persons with disability. The central theme of disability studies has been to move away from understanding disability as a medical condition requiring clinical intervention to understanding disability as an academic terrain. This approach uses disability as a category for research and a source of insight to contribute to existing bodies of knowledge. The paper will use a critical disability theory perspective to understand the failure of legislation, schemes and decisions of the courts in fully accommodating the rights of persons with disabilities. The paper will examine the extent to which the new law on the Rights of Persons with Disability Act 2016 (RPD) accommodates a social model of defining disability in India. It will be argued that the language used in the RPD and other legislation affecting the right to work particularly the definition of persons with disability and disability itself does not allow for a conceptually grounded understanding of disability. When cases are decided the paradigm invoked does not allow for the experience of the person with disability to come through but is often transacted in terms of the liberal model of rights. Legislations need to be re examined with a view to include persons with disabilities and it is not enough for the RPD to provide for an overriding effect of the law.

Keywords Disability · Employment · Right to work · Critical disability theory · UNCRPD · RPD Act 2016

N. Vasanthi (✉)
NALSAR University of Law, Hyderabad, India

© Springer Nature Singapore Pte Ltd. 2020
N. Mehrotra (ed.), *Disability Studies in India*,
https://doi.org/10.1007/978-981-15-2616-9_14

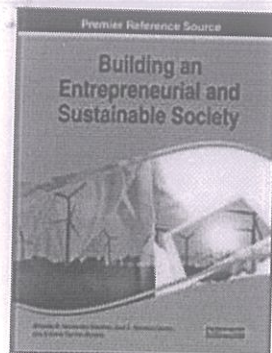
Contents

1	Situating Disability Studies: A Prolegomenon	1
	Nilika Mehrotra	
Part I Epistemologies and Representations		
2	Decolonising Disability Studies? Developing South Asia-Specific Approaches to Understanding Disability	25
	James Staples	
3	Disorder, Disability, Difference: (Re)presenting Autism in India	43
	Shubhangi Vaidya	
4	Disability and Public Spaces: Universal Design Approaches	61
	Shilpa Das	
5	Ignorance of Disability: Some Epistemological Questions	75
	Anita Ghai	
6	Rethinking Monsters: Teaching Disability Studies Through History and the Humanities	93
	Shilpaa Anand	
Part II Policy and Institutionalisation		
7	Service and Knowledge: The Emergence of Disability Studies Extension	111
	Tanmoy Bhattacharya	
8	Disability Education at Lady Irwin College, University of Delhi	133
	Neerja Sharma	

- 9 **Establishing a Disability Studies Centre in a Law University: Recounting the CDS NALSAR Experience** 147
Amita Dhanda
- 10 **Mapping Disability Studies Programmes in India: A Case of Hyderabad, Telangana** 167
Nilika Mehrotra and Ritika Gulyani
- 11 **Disability Social Work Education: Emerging Trajectory in India** 187
Srilatha Juvva

Part III Academia—Activism Interface: Enabling Practices

- 12 **Resisting Dominant Construction of Blindness and the Genesis of Disability Studies in the University of Delhi: A Historical Context** 207
Jagdish Chander
- 13 **Emancipating the Lives of Persons with Disabilities: Potential for Contributions by Disability Studies** 223
Deepa Sonpal and Vanmala Hiranandani
- ✓ 14 **The Right to Work for Persons with Disability in India: A Critical Disability Theory Perspective** 243
Nimushakavi Vasanthi
- 15 **‘Encounters’ with Disabled People: Concerns from Field Work Settings** 261
Mahima Nayar
- 16 **Examining the Question of Deaf Education within Disability Studies in Delhi, India** 277
Ritika Gulyani
- 17 **Examining the Experience, Barriers and Enabling Measures for Visually Impaired Visitors in Heritage Sites—A Study in the Indian Context to Enhance Accessibility and Inclusion** 295
Kavita Murugkar, Anurag Kashyap and Abir Mullick



46

Teaching Sustainable Entrepreneurship and Leadership: Case of a Taught Course – Innovation and Sustainability Specialization

Satyendra C. Pandey (Institute of Rural Management, Anand, India) and Pinaki Nandan Pattnaik (NALSAR University of Law, India)

Source Title: Building an Entrepreneurial and Sustainable Society (/book/building-entrepreneurial-sustainable-society/237828)

Copyright: © 2020

Pages: 12

DOI: 10.4018/978-1-7998-2704-7.ch006

OnDemand PDF
Download:

\$29.50

☐ Available

[Current Special Offers](#)

Abstract

Sustainability has been a part of the corporate lexicon for over a decade now. This has made it important for business schools across the globe to recognize the importance of sustainability and incorporate it into the curricula to train future managers. There are very few instances of having a core specialization being offered in the area of sustainability in an Indian management institute. This case study is an experiential documentation of a course titled Sustainable Entrepreneurship and Leadership offered at a leading university in India. This is a case study of the development of course in Sustainable Entrepreneurship and Leadership: its curriculum design, pedagogy, and evaluation methods. Through this course, an attempt was made to introduce the concept of sustainability in leadership and entrepreneurial ventures to the students. Also, a tryst was made to develop an appreciation towards the triple bottom line of profit, people, and the planet.

Chapter Preview

1. Introduction

Top

Integrating principles, values and practices of sustainable development in education for promoting behavioral changes to appreciate and involve in sustainability has been in call for over one decade. The concept of sustainable development as described by the Brundtland Commission in its report 'Our Common Future' suggests that it is "[...] development that meets the needs of the present without compromising the ability of future generations to meet their own needs. It contains within it two key concepts:

- the concept of 'needs', in particular the essential needs of the world's poor, to which overriding priority should be given; and
- the idea of limitations imposed by the state of technology and social organization on the environment's ability to meet present and future needs.

[...]1"

Triple Bottom Line (TBL) of sustainability points towards 3 essential P's which cannot be overlooked by modern day businesses. These are People, Profit and Planet². Concepts of sustainability, development and entrepreneurship need to find its just place in business school teaching and training. Desire for a profitable enterprise is also something which most of the B-School graduates think about, besides placement. Future entrepreneurs and managers should be exposed to sustainable entrepreneurial vision and action education.

Sustainable entrepreneurship is a recent addition to the long body of literature on entrepreneurship (Guercini & Cova, 2018). Very little advancement has been made in the direction of how sustainable entrepreneurship should be taught in a business school. In keeping with the need to understand and internalize the importance of the subject, the Centre for Management Studies, NALSAR University of Law in India took the decision to introduce a course titled Sustainable Entrepreneurship and Leadership as a specialization in its MBA program in 2014. This chapter is an attempt at discussing key issues in designing as well as delivering the course and providing insights to fellow educators on integrating sustainable entrepreneurship and leadership into MBA curricula.

The university had two major concerns to attend to while introducing the course into the MBA curriculum. To begin with, it is well understood that business students are highly interested in acquiring new skillsets to be relevant to the changing business landscape with an eye on the future. While designing the course, it was important that it matched their career objectives. Thus, it was paramount that clear linkages between the course content and the long term as well as immediate interests of the students were to be addressed. That was a significant challenge.

The other concern was to include the issues of sustainable entrepreneurship and leadership in parlan to the economic realities of a diverse group of students. Although the class had a healthy representation from all over India, it is pertinent to understand that the concepts and realities of sustainability are different among different sub-groups of students depending on the state/province, urban, semi – urban or rural backgrounds of the students. To avoid confusion, the course was designed from the lens of a developed, developing and under – developed society and economy. This provided for a more balanced approach to the issues surrounding the subject area.

The paper discusses in detail the course design and modules. Section 2 provides a brief background of the inception of the course. Section 3 presents the understanding of sustainable entrepreneurship for the purpose of development of this course. Section 4 presents the course overview along with a description of the structure and evaluation mechanism of the course and section 5 provides the discussions and conclusions.

2. Genesis

[Top](#)

Established in the year 1998, National Academy of Legal Studies and Research (NALSAR) University is a premier institute of legal education in the country. In 2013, university decided to set up a B-School within its campus to set the highest benchmarks in the intersection between management and law. The B-School apart from traditional functional offerings also offers Innovation & Sustainability as a specialization.

Complete Chapter List

Search this Book:

[Reset](#)

Table of Contents

[View Full PDF \(/pdf.aspx?tid=251275&ptid=237828&ctid=15&t=Table of Contents&isxn=9781799827047\)](#)

Detailed Table of Contents

[View Full PDF \(/pdf.aspx?tid=251276&ptid=237828&ctid=15&t=Detailed Table of Contents&isxn=9781799827047\)](#)

Foreword

Sílvia Manuel da Rocha Brito (Polytechnic Institute of Tomar, Portugal)

[View Full PDF \(/pdf.aspx?tid=251277&ptid=237828&ctid=15&t=Foreword&isxn=9781799827047\)](#)

Preface

Brizeida R. Hernandez Sánchez (University of Salamanca, Spain), José C. Sánchez-García (University of Salamanca, Spain), António Carrizo Moreira (University of Aveiro, Portugal)

[View Full PDF \(/pdf.aspx?tid=251278&ptid=237828&ctid=15&t=Preface&isxn=9781799827047\)](#)

Chapter 1

The Role of Innovation in Sustainable Entrepreneurship: A Holistic Framework (/chapter/the-role-of-innovation-in-sustainable-entrepreneurship/251279) (pages 1-27)

Eduardo Terán-Yépez (University of Almería, Spain), Gema M. Marín-Carrillo (University of Almería, Spain), M. Pilar Casado-Belmonte (University of Almería, Spain), María de las Mercedes Capobianco-Uriarte (University of Almería, Spain)

Preview Chapter **\$29.50**

[\(/viewtitlesample.aspx?tid=251279&ptid=237828&t=The](#)

[Role of Innovation in Sustainable Entrepreneurship: A Holistic Framework&isxn=9781799827047\)](#)

Chapter 2

A Bibliometric Study on Socially Responsible Entrepreneurs (/chapter/a-bibliometric-study-on-socially-responsible-entrepreneurs/251280) (pages 28-53)

Dolores Gallardo-Vázquez (University of Extremadura, Spain), Teresa Costa (Instituto Politécnico de Setúbal, Portugal), Luis Enrique Valdez-Juárez (Technological Institute of Sonora, Mexico)

Preview Chapter **\$29.50**

[\(/viewtitlesample.aspx?tid=251280&ptid=237828&t=A](#)

[Bibliometric Study on Socially Responsible Entrepreneurs&isxn=9781799827047\)](#)

Chapter 3

Green Innovation and Sustainable Urban Ecosystems (/chapter/green-innovation-and-sustainable-urban-ecosystems/251281) (pages 54-74)

José G. Vargas-Hernández (University Center for Economic and Managerial Sciences, University of Guadalajara, Mexico), Karina Pallagst (Technische Universität Kaiserslautern, Germany)

Preview Chapter **\$29.50**

[\(/viewtitlesample.aspx?tid=251281&ptid=237828&t=Green](#)

[Innovation and Sustainable Urban Ecosystems&isxn=9781799827047\)](#)

Chapter 4

Approaches to Sustainable and Responsible Entrepreneurship: Creativity, Innovation, and Intellectual Capital as Drivers for Organization Performance (/chapter/approaches-to-sustainable-and-responsible-entrepreneurship/251282) (pages 75-95)

Cristina Raluca Gh. Popescu (University of Craiova, Romania & University of Bucharest, Romania & The Bucharest University of Economic Studies, Romania & National Institute of Research and Development for Environmental Protection (INCDPM), Romania)

Preview Chapter **\$29.50**
 (/viewtitlesample.aspx? Add to Cart
 id=251282&ptid=237828&t=Approaches
 to Sustainable
 and Responsible
 Entrepreneurship:
 Creativity,
 Innovation, and
 Intellectual
 Capital as
 Drivers for
 Organization
 Performance&isxn=9781799827047)

Chapter 5

The Context Facets of Sustainability Entrepreneurial Orientation (SEO) Through the Lense of Gender: A Quantitative Measurement Approach (/chapter/the-context-facets-of-sustainability-entrepreneurial-orientation-seo-through-the-lense-of-gender/251283) (pages 96-113)

Joana Costa (University of Aveiro, Portugal), Mariana Pita (University of Aveiro, Portugal)

Preview Chapter **\$29.50**
 (/viewtitlesample.aspx? Add to Cart
 id=251283&ptid=237828&t=The
 Context Facets of
 Sustainability
 Entrepreneurial
 Orientation
 (SEO) Through
 the Lense of
 Gender: A
 Quantitative
 Measurement
 Approach&isxn=9781799827047)

Chapter 6

Teaching Sustainable Entrepreneurship and Leadership: Case of a Taught Course – Innovation and Sustainability Specialization (/chapter/teaching-sustainable-entrepreneurship-and-leadership/251284) (pages 114-125)

Satyendra C. Pandey (Institute of Rural Management, Anand, India), Pinaki Nandan Pattnaik (NALSAR University of Law, India)

Preview Chapter **\$29.50**
 (/viewtitlesample.aspx? Add to Cart
 id=251284&ptid=237828&t=Teaching
 Sustainable
 Entrepreneurship
 and Leadership:
 Case of a Taught
 Course –
 Innovation and
 Sustainability
 Specialization&isxn=9781799827047)

Chapter 7

Exploring Internationalization in Sustainable Entrepreneurship (/chapter/exploring-internationalization-in-sustainable-entrepreneurship/251285) (pages 126-149)

María del Pilar Casado-Belmonte (University of Almería, Spain), Eduardo Terán-Yépez (University of Almería, Spain), Gema Marin Carrillo (University of Almería, Spain), María de las Mercedes Capobianco-Uriarte (University of Almería, Spain)

Preview Chapter **\$29.50**
 (/viewtitlesample.aspx? Add to Cart
 id=251285&ptid=237828&t=Exploring
 Internationalization
 in Sustainable
 Entrepreneurship&isxn=9781799827047)

Chapter 8

Assessing Regional Advantage Based on Smart Specialisation Strategies (/chapter/assessing-regional-advantage-based-on-smart-specialisation-strategies/251286) (pages 150-179)

Luís Farinha (Polytechnic Institute of Castelo Branco, Portugal & NECE, University of Beira Interior, Portugal), João Lopes (NIDISAG, Instituto Superior de Administração e Gestão, Portugal & NECE, University of Beira Interior, Portugal)

Preview Chapter **\$29.50**
 (/viewtitlesample.aspx? Add to Cart
 id=251286&ptid=237828&t=Assessing
 Regional
 Advantage
 Based on Smart
 Specialisation
 Strategies&isxn=9781799827047)

Chapter 9

Creating Hybrid Social Ventures Through Effectuation and Bricolage: The Case of Rec.0
 (/chapter/creating-hybrid-social-ventures-through-effectuation-and-bricolage/251287) (pages 180-203)

Antoni Olive-Tomas (IQS, Universitat Ramon Llull, Spain), Lucinio Gonzalez-Sabate (IQS, Universitat Ramon Llull, Spain)

Preview Chapter **\$29.50**
 (/viewtitlesample.aspx? Add to Cart
 id=251287&ptid=237828&t=Creating
 Hybrid Social
 Ventures
 Through
 Effectuation and
 Bricolage: The
 Case of
 Rec.0&isxn=9781799827047)

Chapter 10

Depth of Outreach and Financial Sustainability of Microfinance Institutions: An Empirical Revisit
 (/chapter/depth-of-outreach-and-financial-sustainability-of-microfinance-institutions/251288) (pages 204-218)

Mohammad Zainuddin (Putra Business School, Universiti Putra Malaysia, Malaysia), Ida Md. Yasin (Putra Business School, Universiti Putra Malaysia, Malaysia), Masnun Mahi (Faculty of Business and Administration, University of Malaya, Malaysia), Shabiha Akter (Taylor's Business School, Taylor's University, Malaysia)

Preview Chapter **\$29.50**
 (/viewtitlesample.aspx? Add to Cart
 id=251288&ptid=237828&t=Depth
 of Outreach and
 Financial
 Sustainability of
 Microfinance
 Institutions: An
 Empirical
 Revisit&isxn=9781799827047)

Chapter 11

Sustainable Innovation: Challenges in the Tourism Industry (/chapter/sustainable-innovation/251289) (pages 219-245)

Cristina Silva Araújo (University of Aveiro, Portugal), António Carrizo Moreira (University of Aveiro, Portugal)

Preview Chapter **\$29.50**
 (/viewtitlesample.aspx? Add to Cart
 id=251289&ptid=237828&t=Sustainable
 Innovation:
 Challenges in the
 Tourism
 Industry&isxn=9781799827047)

Chapter 12

Women Entrepreneurship and Sustainable Rural Development in India (/chapter/women-entrepreneurship-and-sustainable-rural-development-in-india/251290) (pages 246-259)

Badal Chandra Das (Vidyasagar University, India), Sebak Kumar Jana (Vidyasagar University, India)

Preview Chapter **\$29.50**
 (/viewtitlesample.aspx? Add to Cart
 id=251290&ptid=237828&t=Women
 Entrepreneurship
 and Sustainable
 Rural
 Development in
 India&isxn=9781799827047)

Chapter 13

Growing Opportunities in Attracting Investments for the Sustainable Socio-Economic Development of the ATU Gagauzia (Republic of Moldova) (/chapter/growing-opportunities-in-attracting-investments-for-the-sustainable-socio-economic-development-of-the-atu-gagauzia-republic-of-moldova/251291) (pages 260-273)

Svetlana Ghenova (Comrat State University, Moldova)

Preview Chapter **\$29.50**
 (/viewtitlesample.aspx? Add to Cart
 id=251291&ptid=237828&t=Growing
 Opportunities in
 Attracting
 Investments for
 the Sustainable
 Socio-Economic
 Development of
 the ATU
 Gagauzia
 (Republic of
 Moldova)&isxn=9781799827047)

Chapter 14

Stakeholder Information Flow From Horse Entrepreneurs to Customers: Preliminary Study of Prevention of Equine Infectious Diseases (/chapter/stakeholder-information-flow-from-horse-entrepreneurs-to-customers/251292) (pages 274-288)

Heli I. Koskinen (University of Helsinki, Finland), Rauno Rusko (University of Lapland, Finland)

Preview Chapter **\$29.50**
 (/viewtitlesample.aspx? Add to Cart
 id=251292&ptid=237828&t=Stakeholder
 Information Flow
 From Horse
 Entrepreneurs to
 Customers:
 Preliminary Study
 of Prevention of
 Equine Infectious
 Diseases&isxn=9781799827047)

Chapter 15

Mindfulness Approach to Ethical Consumption (/chapter/mindfulness-approach-to-ethical-consumption/251293) (pages 289-304)

Tai Anh Kieu (University of Economics and Finance, Vietnam), Tri D. Le (Ho Chi Minh City International University, Vietnam)

Preview Chapter **\$29.50**
 (/viewtitlesample.aspx? Add to Cart
 id=251293&ptid=237828&t=Mindfulness
 Approach to
 Ethical
 Consumption&isxn=9781799827047)

About the Contributors

View Full PDF (/pdf.aspx?
 tid=251295&ptid=237828&ctid=17&t=About the
 Contributors&isxn=9781799827047)

Index

View Full PDF (/pdf.aspx?
 tid=251296&ptid=237828&ctid=17&t=Index&isxn=9781799827047)

Learn More

About IGI Global (/about/) | Partnerships (/about/partnerships/) | COPE Membership (/about/memberships/cope/) | Contact (/contact/) | Job Opportunities (/about/staff/job-opportunities/) | FAQ (/faq/) | Management Team (/about/staff/)

Resources For

Librarians (/librarians/) | Authors/Editors (/publish/) | Distributors (/distributors/) | Instructors (/course-adoption/) | Translators (/about/rights-permissions/translation-rights/)

Media Center

Webinars (/symposium/) | Blogs (/newsroom/) | Catalogs (/catalogs/) | Newsletters (/newsletters/)

Policies

Privacy Policy (/about/rights-permissions/privacy-policy/) | Cookie & Tracking Notice (/cookies-agreement/) | Fair Use Policy (/about/rights-permissions/content-reuse/) | Accessibility (/accessibility/) | Ethics and Malpractice (/about/rights-permissions/ethics-malpractice/)

(http://www.facebook.com/pages/IGI-Global/138206739534176?ref=sgm)

(http://twitter.com/igiglobal)

(https://www.linkedin.com/company/igi-global) (http://igiglobal.org/forgotten-children.org)

(https://publicationethics.org/category/publisher/igi-global)



47



CONTEMPORARY ENVIRONMENTAL CONCERNS

CONTEMPORARY ENVIRONMENTAL CONCERNS

MULTI- DISCIPLINARY ASPECTS OF ENVIRONMENTAL LAW



VOLUME - I
2020

TABLE OF CONTENTS

TECHNOLOGY TRANSFER AND CLIMATE CHANGE – MAPPING THE PATH FORWARD	1-14
<i>By Anubhab Sarkar and Pallavi Khanna</i>	
ARE CORPORATE SOCIAL RESPONSIBILITY MEASURES ADEQUATE TO MAKE MNCs RESPONSIBLE FOR THEIR ACTIONS TOWARDS THE ENVIRONMENT?: A GLOBAL PERSPECTIVE	15-30
<i>By Anuradha Arputham</i>	
INTEGRATION OF ENERGY RESOURCES DIRECTIVE FOR CLIMATE CHANGE MITIGATION POLICY	31-44
<i>By Avinash Singh</i>	
RIO TO PARIS VIA POZNAN- THE JOURNEY OF TECHNOLOGY TRANSFER MECHANISM UNDER UNFCCC	45-56
<i>By Chiradeep Basak and Swastik</i>	
SUSTAINABILITY VIS-À-VIS PEOPLE'S PARTICIPATION IN ENVIRONMENTAL DECISION MAKING	57-66
<i>By Dr. Rupam Jagota and Praisya Chanana</i>	
SOLID WASTE MANAGEMENT LAW IN INDIA: OBSTACLES AND OPPORTUNITIES	67-88
<i>By Filzah Belal</i>	
A DALIT CRITIQUE OF ENVIRONMENTAL JUSTICE IN INDIA	89-120
<i>By Bhimraj M</i>	
AN ECONOMIC ANALYSIS OF CORPORATE SOCIAL RESPONSIBILITY	121-132
<i>By Sneha Dey</i>	
A HISTORY OF NEGLECT: THE NORTH-SOUTH DIVIDE IN CLIMATE CHANGE TECHNOLOGY TRANSFER	133-152
<i>By Vivek Mukherjee</i>	
THE CONCEPT OF ENVIRONMENTAL IMPACT ASSESSMENT: PROCESS AND PRACTICE AT THE GLOBAL LEVEL	153-162
<i>By Dr. Ivneet Kaur Walia</i>	

48

Acc.No.

D04479

INVESTMENT FUNDS IN INDIA

A LEGAL HANDBOOK

ALOK VERMA AND KARAN TREHAN

FOREWORD BY

GANESH PRASAD,
PARTNER, KHAITAN & CO



THOMSON REUTERS

11/18/2018

CONTENTS

<i>List of Illustrations</i>	xi
<i>Foreword</i>	xiii
<i>Preface</i>	xv
<i>Acknowledgements</i>	xvii
Chapter 1—Introduction to Investment Funds	1
1.1 Overview	1
1.2 Structure/Participants of a Fund	1
1.2.1 Sponsor	1
1.2.2 Investors	2
1.2.3 Investment Fund Vehicle	2
1.2.4 Managers	3
1.3 Classification of Funds	3
1.3.1 Maturity of the Fund	4
1.3.2 Nature of Investment	5
1.3.3 Investment Strategy	8
Chapter 2—Trusts in India: An Overview	11
2.1 Introduction	11
2.2 Benefits of Trust Arrangement	12
2.3 Legal Framework in India	13
2.4 Public and Private Trusts	14
2.4.1 Private Trusts	14
2.4.2 Public Trusts	22
2.5 Taxation of Trusts	25
2.5.1 Irrevocable-Specific ('Determinate') Trust	27

2.5.2	Irrevocable Discretionary ('Indeterminate') Trust	28
2.5.3	Revocable Trust.....	29
2.5.4	Oral Trust.....	30
2.5.5	Taxation of Business Income.....	31
2.5.6	Exemptions Available to Public Trusts.....	33
2.5.7	Taxation of Funds.....	35
Chapter 3—Securitisation Trust		36
3.1	Overview	36
3.2	Origin of Securitisation	38
3.3	Securitisation Process	41
3.4	Advantages and Disadvantages of Securitisation.....	44
3.5	Securitisation in India.....	47
3.6	Legislative Framework.....	52
3.6.1	Important Definitions	54
3.6.2	RBI Guidelines on Securitisation Transactions.....	55
3.6.3	SEBI (Issue and Listing of Securitised Debt Instruments and Security Receipts) Regulations, 2008	60
3.6.4	Residential MBS Guidelines.....	63
3.7	Taxation of Securitisation Transactions in India	64
3.7.1	Income Tax.....	65
3.7.2	Implication of Goods and Services Tax ('GST') on Securitisation Transactions	74
3.8	Reporting Requirements.....	76
Chapter 4—Mutual Funds		78
4.1	Overview	78
4.2	History of Mutual Funds.....	78
4.2.1	The Global Account of Mutual Funds	78
4.2.2	Historical Account of Mutual Funds in India	82
4.3	Structure of a Mutual Fund.....	86
4.3.1	Legislative Framework	87

4.3.2	Rights, Obligations and Responsibilities of Parties to a Mutual Fund.....	88
4.3.3	Requirement of Minimum Investors in the Scheme	91
4.3.4	Investment Conditions and Restrictions on Borrowings by Mutual Funds	92
4.4	Types of the Scheme/Fund.....	93
4.4.1	Classification of Mutual Funds Based on Maturity Period.....	93
4.4.2	Classification of Mutual Funds Based on Investment Objective of the Fund.....	94
4.4.3	Investment Plans Available to Investors	97
4.4.4	Investment Objective	98
4.4.5	Listing of Mutual Fund Scheme and Continuous Disclosure Requirement.....	98
4.5	Progression of Taxation Regime on Mutual Funds in India	99
4.5.1	Pre-1999	99
4.5.2	Between the Year 1999 and 2016.....	100
4.5.3	2018 Onwards	101
4.6	Taxation of Mutual Funds.....	101
4.6.1	Tax Implication on Income Received by the Mutual Fund.....	101
4.6.2	Tax Implication on Income Distributed to the Investor	101
4.6.3	Tax Implication on Transfer of Units	103
4.6.4	Goods and Services Tax ('GST') Implication on Mutual Funds	105
4.6.5	Reporting Requirements under ITA	105
	Chapter 5—Business Trusts	106
5.1	Overview of Business Trusts	106
5.2	Business Trusts in India	107
5.3	REITs in India.....	109
5.3.1	Structure of REITs in India	109
5.3.2	Parties to the Trust	111

5.3.3	Investment by the REIT	113
5.3.4	Distributions by the REIT	114
5.4	InvITs in India	115
5.4.1	Structure of InvITs	115
5.4.2	Parties to the InvIT	116
5.4.3	Investment by the InvIT	119
5.4.4	Distributions by the InvIT.....	121
5.5	Taxation of Business Trusts.....	121
5.5.1	Partial Pass-Through Status	123
5.5.2	Capital Gains.....	127
5.5.3	Summary of Taxation Regime.....	128
5.6	Reporting Requirements.....	129
Chapter 6	—Alternate Investment Funds.....	131
6.1	Overview	131
6.2	History of AIFs in India.....	133
6.3	Structural and Regulatory Overview of AIFs in India.....	138
6.3.1	Categories of AIFs	139
6.3.2	Registration Requirements.....	142
6.3.3	Investments in AIFs	145
6.3.4	Investments by AIFs.....	147
6.3.5	Winding Up.....	152
6.4	Taxation of Alternate Investment Funds in India	154
6.4.1	Pass-through Status	154
6.4.2	Tax Deduction at Source ("TDS")	164
6.4.3	Dividend Distribution Tax ("DDT")	165
6.4.4	Applicability of Section 56(2)(viib)	165
6.5	Reporting Requirements.....	166

Chapter 7—Offshore Funds	167
7.1 Overview	167
7.2 Foreign Investment.....	167
7.2.1 An Introduction	167
7.2.2 Evolution of Foreign Investment in India	171
7.3 Structuring of Offshore Funds.....	177
7.4 Regulatory Regime in India.....	179
7.4.1 FDI.....	182
7.4.2 FVCI.....	184
7.4.3 Foreign Portfolio Investors.....	189
7.4.4 International Financial Services Centres ('IFSCs').....	199
7.5 Taxation	202
7.5.1 FPIs	206
7.5.2 Other Offshore Funds	208
7.5.3 Investment in Specific Instruments.....	209
7.5.4 IFSCs.....	212
Index	215

INDIAN INSTITUTE OF MANAGEMENT KOZHIKODE
04th International Conference on Marketing, Technology & Society 2020



The role of consumer typology on the consumers' green involvement and its effect on green purchase behaviour

Dr. Deepti Jog¹
Dr. Apeksha Champaneri²

Abstract

This paper attempts to investigate how green, pseudo-green and non-green consumers differ in their rational and emotional determinants of desire for green consumer behaviour, and derive distinct advertising implications for each group through a theoretical underpinning. We distinguish consumers into three categories (green, pseudo-green and non-green) and test them as a moderating variable. The research is two-fold. At the first level, in an attempt to identify the pseudo-green consumer scale. The scale items will be identified basis rigorous literature review and interviews conducted among consumers. The study is the theoretical insight to explain the outcomes of the interviews conducted for identifying the pseudo-green consumer criteria in detail.

Keywords: Green consumers, pseudo-green consumers, green purchase behaviour, consumer typology, green involvement

Introduction:

Consumers are a key driver when it comes to sustainable production as they are seen to opt for products differently according to their understanding on the impact of their consumption choice on ecology and the environment (Bonini & Oppenheim, 2008). Green consumers are the ones who engage in a set of pro-environmental behaviours for environmental reasons (Barbarossa & Pelsmacker, 2014). They are characterised basis their purchase choice, product use and post-use, household management, collective, and consumer activism behaviours, reflecting some degree of environmental-related motivation (Peattie, 2010), purchase and use of products with lower environmental impacts (Pinto et. al, 2014), purchase products and services perceived to have a positive (or less negative) influence on the environment (Haws et. al, 2013). Non-green consumers on the other hand do not engage in pro-environmental behaviour (Barbarossa & Pelsmacker, 2014).

In general sense, conventional consumers are defined as being non-green consumers for not being able to emphasize on the environmental impact of their purchase decision (D'Souza, 2004). Although, it is observed that the green behaviours are not consistent among certain consumers, and such consumers tend to selectively opt for green product in certain product categories (Straughan & Roberts, 1999) and not in others. Such behaviour are also observed to be situation specific and are a result of factors such as peer influence (Lee, 2010), local environmental involvement (Lee, 2010), pricing variations (D'Souza, Taghian, & Khosla, 2007; Chen et. al, 2006), unavailability of green alternatives (Shamdasani et. al, 1993), etc. To cater to this category of green consumers, a new typology of consumer called 'pseudo-green consumers' is introduced in the current study that suits such consumers who do not consistently engage in green behaviours. The 'pseudo-green consumers' are theatrically green and do not engage in consistent environmental behaviours. The definition of the term 'pseudo-green' is referred from a study by Mahdavejad et. al (2014). Thus, Pseudo-green players are expected to be adopting green behaviours in the consumer market for some

¹ Assistant Professor, V M Salgaokar Institute of International Hospitality Education
Manora Raia Salcette Goa 403720 Email: deeptijog6@gmail.com

² Assistant Professor, Gujarat Law Society University, GLS Campus, Opp Law Garden, Ellisbridge,
Ahemdabad 380006 Email: apeksha@nr.ibm.org

particular reason. The reasons could be, feel good factor, societal pressure, to maintain a status of being a green consumer and many more. Thus, these consumers are not pure-green and may change their green product preference based on changed circumstance. Pseudo-green typology can further be subdivided on the basis of other functional aspects. The three typologies explained above can provide an interesting understanding on the green consumer behaviour, and help marketers segment their markets accordingly.

With businesses questioning the role played by consumer's green involvement and in light of the rapidly accelerating number of green consumers, marketers have continued to grapple with the question of understanding consumers' comprehension on green purchase decisions. Factors such as green purchase attitude, which are formed as a result of likes and dislikes of customers and inclinations of the customers to buy a product with due consideration to environmental protection may significantly vary across the different consumer groups. Basis the existing long – standing value – behaviour theory (Shims, 1995) and the theory of planned behaviour (TPB) (Kalafatis, 1999, Jung-Min Ahn, 2012) additional factors including, green intention (Formed as a result of factors that can motivate the consumers towards green purchase decision), green peer influence (influence social group exert on individuals green buying) (Khare & Pandey, 2017), green mindfulness (a state of conscious awareness in which individuals are implicitly aware of the context and content of environmental information and knowledge) (Chen et. al 2014), exhibit a stronger linkage towards the consumer's green purchase behaviour and may help classify the consumers into the three typologies listed above.

Literature Review

Green Consumer Typology

A substantial amount of research has been done in defining and profiling green consumer segments (e.g. Chen and Chang, 2013a; Peattie, 2001; Roberts, 1996; Shrum et al., 1995). In order for understanding the existing green consumer typologies, it was crucial to highlight the existing literature classifying the green consumers. Table 1 below, shows existing classification of green consumers.

Table 1: Literature on Green Consumers Typology

Author	Year	Classifications of Green Consumers
Mostafa	2009	potential greens, basic browns, true-greens, reluctant greens
Awad, T.A.	2011	1. <u>Green</u>: segment characteristics showed high orientation towards preserving the environment 2. <u>Ambiguous</u>: environmentally knowledgeable, such knowledge was not translated in their purchasing behaviour. 3. <u>Un-devoted</u>: respondents 'were also sceptical about businesses claims made concerning the environment, to which it was not seen as, important among their worries 4. <u>Explorers</u>: This segment scored high in environmental concern, resources saving, and willingness to pay more to preserve the environment. However, they take a negative position towards government intervention in the business environment.
Arminda M Finisterra do Paço	2009	1. <u>The uncommitted</u>: segment have very negative positions in relation to some environmental aspects (activism, environmentally friendly buying behaviour, recycling, resource saving and willingness to pay more to preserve the environment), despite the fact that they claim to have knowledge about the issue. 2. <u>The green activists</u>: The individuals in this segment have a favourable position in relation to all environmental aspects, particularly towards perceived efficiency, environmentally friendly buying behaviour, recycling, sensitivity to the economic factor and resource saving, but they show themselves to be sceptical about the promotional and advertising claims made by firms. 3. <u>The undefined</u>: They have a positive attitude towards recycling, and

		are highly sceptical about the promotional and advertising claims made by firms. They claim to have little knowledge about environmental issues. The environment does not occupy a prominent position among their concerns, and they consider that their individual action does not contribute to the improvement of the environment.
Rex and Baumann	2007	Consumers according to typology by Ogilvy and Mather (in ref.[10](1992)) Consumer typology by Ogilvy and Mather <u>16% Activists</u> : Likely to buy green products and services <u>34% Realists</u> : Are worried about the environment but sceptical about the green and Vegan <u>28% Complacent</u> : See the solution as somebody else's problem <u>22% Alienated</u> : Are unaware of green issues or see them as transient share of consumers <u>11% True Blue Greens</u> : Major green purchasers and recyclers <u>5% Greenback Greens</u> : Will buy or give green but won't make lifestyle changes <u>33% Sprouts</u> : Care but would only spend a little more to buy green <u>18% Grouse</u> : Environment is somebody else's problem <u>31% Basic Browns</u>: Essentially don't/won't care.
Barbarossa and Pelsmacker	2016	<u>Green consumers</u> are defined as those individuals who engage in a set of pro-environmental behaviours' (e.g., recycling, reducing household waste) primarily for environmental reasons. <u>Non-green consumers</u> are defined as those individuals who do not engage in a set of pro-environmental behaviours.

Based on the current understanding of the existing green consumer typologies, it is understood that the pseudo green criteria of green consumer has not been extensively studied in the existing literature.

Green Consumption Behaviour

Green consumption behaviour interlaces with other concepts such as ethical, sustainable and responsible consumption behaviours (Peattie, 2010). The concept is majorly discussed in the concept of purchase of products that are not harmful to environment or society or are recyclable and beneficial to environment (Chan, 2001). Green consumer behaviour is commonly associated with factors such as environmental protection (Tanner and Wölfling Kast, 2003); consumption reduction (Huttunen and Autio, 2010) and consumer social consciousness and responsibility (Moisander, 2007). Commonly, consumers' green consumption behaviour (GCB) includes recycling, protecting waterways, bringing own shopping bags, the purchase and consumption of EF products etc (Tan, Johnstone and Yang, 2016). Based on the above understanding, following hypothesis are proposed.

Several definitions were found in the literature; most associated green consumption with environmental protection (e.g., Tanner and Wölfling Kast, 2003), consumer social consciousness and responsibility (e.g., Moisander, 2007), while others related it to consumption reduction (e.g., Huttunen and Autio, 2010).

Research Question: How can the green, non-green and pseudo green consumers be differentiated in terms of their green consumption behaviours among Indian green consumers.

The present study proposes to employ a two-step procedure. This study considers designing a scale to understand the green consumer typologies at the first stage. The second stage of the research involves testing the mediating/moderating role of the proposed green consumer typologies on the relationship between green attitude, green trust and green performance as independent variables and green consumption behaviour as dependent variable.

Research Methodology:

In the current study, we attempt to summarise the existing literature basis how the three types of consumers significantly differ in their green purchase behaviour. The scale items were identified basis interviews conducted among consumers based on the last purchase decision. Personal interviews were conducted with 10 household consumers randomly to understand their approach towards green consumption. The findings of the interviews are provided in the table 2 below.

Consumer	Factors considered to decide to purchase the product	Whether purchased environmentally friendly products before
A	Quality, brand, (comes first), Budget, Furniture (Durable wood), quality Places (shops chosen), online shopping (service experience). Delivery time	Always eg. <u>Meat and sea food</u> – brands having their own farm and hygienic, good delivery <u>Craft Items</u> – less choice, plastic pen, plastic packaging. Limited choice, availability is a constraint, organic food, plastic packaging, and durability – Replacing stuff less often.
B	Imp factor – Cost Utility	Yes
C	Food Purchase: Reviews, Friends and family, Groceries Purchase: Respondents own experiences House Purchase: Quality, ratings, price comparison.	No
D	Brand perception, Fresh stock and place of purchase should be clean and hygienic. The way it is stored. Earlier experience and discounts – Consumer durables-New brand is opted is in small package just for trial..	Not aware. Does not know how to check for the same
E	Quality Brand	Yes. Wherever available
F	Design, price, material, easy availability	Yes, Cloth and paper bags
G	Primary factor: Fully packed packaging, availability, loyal towards certain brands, Secondary factor: Price	Trash Bags
H	Price, Delivery time, comfort, quality, discount, brand name, utility	Detergent Powder, Staple, Menstrual cup
I	Price, brand options and convenient	No
J	Brand name, price and discounts, design	Tissue paper

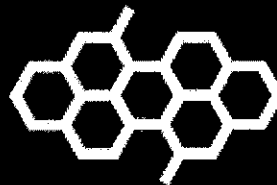
The next step involves conducting an extensive literature review to identify the scale items for designing a green consumer typology scale. The scale will be tested with the existing variables such as green consumption behaviour, green trust, attitude towards green product, green price sensitivity, green product availability and external influence.

50



RETHINKING INDIA SERIES

**THE MINORITY
CONUNDRUM
LIVING IN
MAJORITARIAN
TIMES**



EDITED BY
TANWEER FAZAL



The Violence of Law

Manisha Sethi

As I started to write, Sadhvi Pragya declared a two-day vow of silence as penitence for calling Gandhi's killer a true 'patriot'. Her outburst—swiftly condemned by her party officially—was triggered by the film-star-turned-politician Kamal Haasan's denunciation of Nathuram Godse as the first 'Hindu terrorist'. Nevertheless, the BJP did field Pragya Sadhvi in the 2019 general elections. A key accused in the Malegaon blasts of 2008—it was the motorcycle registered in her name on which the bombs were mounted—Pragya was said to have been an important cog in the Hindutva terror network of Abhinav Bharat.¹ This network allegedly conspired and executed multiple blasts through 2007–08, the most significant among them being Samjhauta Express, Mecca Masjid, Ajmer Sharif and Malegaon.²

In 2014, when the BJP swept to power, the cases against Pragya and other accused tottered—amidst revelations by the special public prosecutor that the National Investigation Agency (NIA) had asked her to go slow—with acquittals in one case after another.³ These acquittals have provided grist to the Hindutva apologia mill that the NIA, a specialized agency set up by the United Progressive Alliance (UPA) in the aftermath of the Mumbai carnage in November 2008, had spawned the bogey of Hindutva terror at the behest of the Congress Party.⁴ Pragya was granted bail on medical

COMMERCIALISATION AND PRIVATISATION OF OUTER SPACE

Issues for National Space Legislation



Edited by
R. VENKATA RAO
&
KUMAR ABHIJIT

About the Contributors

Message from Dr. Jitendra Singh, Hon'ble Minister, Department of Space
Prologue

Articles

1. Potentials of Private Participation in the Indian Space Sector: Policy and Legal Needs
K. R. Sridhara Murthi
2. State Responsibility for the Space Activities of Private Actors
G. S. Sachdeva
3. National Space Legislation: What International Law Demands and How it is Implemented
Stephan Hobe
4. Commercialisation of Remote Sensing and Geo-Spatial Data: The Emerging Legal Jargons
V. Balakista Reddy
5. On Drafting A Viable Model of National Space Legislation for India
Sandeepa Bhat B.
6. State Practices Towards National Space Legislation
Kumar Abhijeet
7. Perspectives on Global Space Transport that may Begin Operations in Due Course
Saligram Bhatt
8. Manifesto for PSLV Privatisation
Susmita Mohanty
9. Space Law for Space Commerce or Vice Versa: A Chicken-and-Egg Situation for Space Commerce in India?
Narayan Prasad
10. Policy Framework for Commercial Space Activities
Ashok G. V.
11. Commercialisation and Privatisation of Outer Space: Exploiting the Commercial Value of Space
D. S. Govindrajan

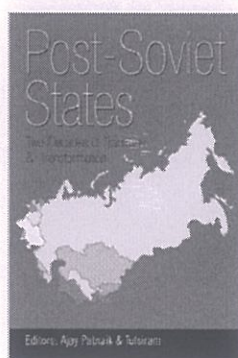
Brief Comments 1. Space Law in the Age of Privatisation and Commercialisation 123

- Saligram Bhatt*
2. Institutionalisation of Space Law in India
Malay Adhikari
 3. The Private Space Activity Regulator's Role in the Space Environment Protection: A Policy Snapshot
Deva Prasad M.
 4. Need for a Business Incubation in the Indian Space Programme
Prateep Basu

Annexures

1. The ILA Model Law
Stephan Hobe
2. A National Space Law for India: Deconstructing the Proposition
Ranjana Kaul
3. The Bangalore Declaration
4. The Conference Programme Schedule

Related Products



(<http://kwpub.in/Home/proc>)

2011



BEST PUBLISHERS AWARD (ENGLISH)

SM DUGAR

GUIDE TO
COMPETITION
ACT, 2002

An exhaustive section-wise commentary incorporating
all legislative and judicial developments

8th Edition

Sudhanshu Kumar



LexisNexis®

The Right to Work for Persons with Disability in India: A Critical Disability Theory Perspective

N. Vasanthi • Published 2020 • Philosophy, Law

The UNCRPD sets out the right to work and employment under Article 27 as including the right against discrimination and the right to just and favourable conditions of work. The paper draws upon decisions from the High Courts and the Supreme Court on the Indian Constitution and Labour Legislation, as well as schemes under Central and State Governments to critically examine how the Indian legal system responds to issues of discrimination and the right to just and favourable conditions of work of. Expand

 View via Publisher

 Save

 Alert

1 References

Related Papers

References

Disability studies in India : global discourses, local realities

Renu Addlakha • Philosophy • 2013

List of Tables. List of Figures. List of Plates. List of Abbreviations. Glossary.

Acknowledgements. Introduction Renu Addlakha. Part I. Disability Movement, Disability Rights and Disability Studies... Expand

 19 •  Save  Alert

54

 Free standard shipping on all orders



Search by keywords, subject, or ISBN



Shop By Subject | Instructors & Students | Professional Practice | Publish With Us | SALE

April Super Saver • 20% OFF EVERYTHING • Shop Now

SAVE £7.40

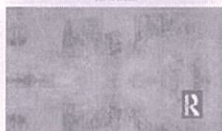
 Table of Contents

 Book Description



LAND LAW IN INDIA

Astha Saxena



 PREVIEW BOOK

 RECOMMEND TO
LIBRARIAN

1st Edition

Land Law in India

By Astha Saxena

Copyright 2020

Paperback
£29.59

Hardback
₹1495.00

eBook
N/A

ISBN 9780367776978

502 Pages

Published April 1, 2021 by Routledge India

 Free Shipping (14-21 Business Days)
[shipping options](#)

Paperback

£36.99

GBP £29.59

QTY 1

 ADD TO CART

PURCHASE LOCALLY

ADD TO WISH LIST

Description

This book is a critical study of the laws regulating landownership patterns. Land and land law are woven into the fabric of our society and are therefore integral to the substantive questions of equality and developmental ideologies of the state. This volume uncovers the socio-economic realities that surround land and approaches the law from the standpoint of the marginalized, landless and the dispossessed.

This book:

- Undertakes an extensive survey of existing legislations, both at the union and state level through a range of analytical tables;

- Discusses the issues of land reform; abolition of intermediaries and tenancy reform; need for redistribution; ceilings on agricultural holdings; law of land acquisition; legal construction of public purpose and displacement, dispossession, compensation, and rehabilitation to construct a case for redistribution;

- Inquires into the phenomenon of landlessness that widely prevails in India today and lays bare its causes.

An invaluable resource, this volume will be an essential read for all students and researchers of law, political studies, sociology, political economy, exclusion studies, development studies, and Asian studies.

Table of Contents

Author(s)

Shipping Options

[Back To Top ^](#)

CONTACT US

Customer Service
Editorial Contacts
Sales Contacts
Rights and Permissions
Become an Affiliate Partner [↗](#)

FAQS

PARTNERS

CUSTOMER RESOURCES

Authors
Booksellers
Instructors
Librarians
Press and Media
Professionals
Societies and Associations
Students

OUR PRODUCTS

eBooks
eBook+
Book Series
Online Platforms
Open Access Books
Focus Shortform Books

ABOUT US

About Routledge
About Taylor & Francis [↗](#)
Taylor & Francis Journals [↗](#)
Careers [↗](#)

BLOG

TOPICS

POLICIES

Shipping Information
Returns and Cancellations
Terms and Conditions
Inspection Copies
Cookie Policy
Accessibility
Privacy Policy [↗](#)

SOCIAL



56

Acc.No.

0 2 7 0 8 0

CONSUMER PROTECTION AND SUSTAINABLE CONSUMPTION

Edited by

DR. SARFARAZ AHMED KHAN

DR. M. RAJANIKANTH

Foreword by

JUSTICE M.B. SHAH

Former Judge, Supreme Court of India

Former Chief Justice, High Court of Bombay

Former President, NCDRC, New Delhi



THOMSON REUTERS

CONTENTS

<i>Table of Cases</i>	<i>xi</i>
<i>Foreword</i>	
<i>Justice M. B. Shah, Former Judge, Supreme Court of India</i>	<i>xiii</i>
<i>Preface.....</i>	<i>xvii</i>
<i>Acknowledgements</i>	<i>xxi</i>
 Introduction: Consumer Protection and Sustainable Consumption	1
<i>Dr. Sarfaraz Ahmed Khan and Dr. M. Rajanikanth</i>	
 1—Consumer Protection: An Appraisal of Regulatory Framework in India	14
<i>Dr. Sarfaraz Ahmed Khan and Dr. D. Ganesh Kumar</i>	
 2—The Consumer Protection Act, 2019: A Focus on E-commerce and Legal Challenges	33
<i>Prof. Dr. V. Balakista Reddy</i>	
 3—Critical Study on E-commerce and Consumer Protection	55
<i>Dr. Kolluri Venkata Somanatha Sarma</i>	
 4—Consumer Protection and Criminal Liability in India	70
<i>Dr. D. V. Srilakshmi</i>	
 5—A Note on History of Consumer Movement in the UK and India: An Exploration	83
<i>Dr. Anuradha Binnuri</i>	

6—Consumer Awareness and Consumer Education.....	94
<i>Shobha Rani V.</i>	
7—Faculty Brain for Social Gain – Role of Universities in Consumer Protection: A Case Study of Consumer Services Rendered by S. K. University, Ananthapuram	114
<i>Prof. H. Lajipathi Rai</i>	
8—Political Consumerism: An Overview.....	121
<i>Rajeev Singh</i>	
9—Consumerism and Sustainable Consumption in Indian Jurisprudence: A Socio-Legal Analysis	133
<i>Dr. Rakesh Kumar Singh</i>	
10—Consumerism and Challenges Vis-a-Vis Road to Sustainable Consumption	144
<i>K. Shanthi</i>	
11—Consumer Protection Law and Medical Negligence.....	152
<i>M. Sreevani</i>	
12—Sustainable Consumption and Stakeholders' Responsibility: Legal and Economic Analysis.....	170
<i>Dr. K. Rajendra and A. Sridhar</i>	
13—'Purpose': The 5th 'P' of Marketing: An Outcome of Consumer Citizenship	178
<i>Vineeth George</i>	
14—Availing Consumer Rights in Marketplace: A Study on Rural Consumers in Telangana	191
<i>Dr. M. Rajanikanth and Dr. Prageetha G. Raju</i>	

15—Awareness of Green Marketing Innovations among Youth in Indian Metro Cities.....	204
<i>Dr. Samunnatha Vemuri and Srujana Vanga</i>	
16—Greenwashing and Green Trust: Green Marketing Leading to Consumer Confusion and Losses to the Companies.....	219
<i>Dr. M. Rajanikanth</i>	
17—Molding Consumer Culture Through Artificial Intelligence: An Assessment	231
<i>Mr. Ahmar Afaq and Hamza Khan</i>	
18—Impact of Customer Relationship Management on Store Patronage Behavior of Indian Customers: An Empirical Investigation	241
<i>Prof. Dr. Kunal Gaurav and Nidhi Priya</i>	
<i>Appendix 1—Consumer Protection Act, 2019.....</i>	<i>257</i>
<i>Appendix 2—Consumer Protection (E-commerce) Rules, 2020</i>	<i>319</i>
<i>Appendix 3—Consumer Protection (Salary, Allowances and Conditions of Service of President and Members of the State Commission and District Commission) Model Rules, 2020</i>	<i>328</i>
<i>Appendix 4—Consumer Protection (Qualification for Appointment, Method of Recruitment, Procedure of Appointment, Term of Office, Resignation and Removal of the President and Members of the State Commission and District Commission) Rules, 2020.....</i>	<i>332</i>
<i>Appendix 5—Consumer Protection (Mediation) Rules, 2020.....</i>	<i>338</i>
<i>Appendix 6—Consumer Protection (General) Rules, 2020.....</i>	<i>340</i>
<i>Appendix 7—Consumer Protection (Consumer Disputes Redressal Commissions) Rules, 2020</i>	<i>342</i>
<i>Appendix 8—Consumer Protection (Central Consumer Protection Council) Rules, 2020.....</i>	<i>354</i>
<i>Appendix 9—Central Consumer Protection Authority (Allocation and Transaction of Business) Regulations, 2020</i>	<i>359</i>
<i>Appendix 10—Consumer Protection (Mediation) Regulations, 2020</i>	<i>361</i>

<i>Appendix 11—Consumer Protection (Consumer Commission Procedure) Regulations, 2020</i>	<i>368</i>
<i>Appendix 12—Consumer Protection (Administrative Control over the State Commission and the District Commission) Regulations, 2020.....</i>	<i>378</i>
<i>List of Contributors</i>	<i>381</i>
<i>Index</i>	<i>387</i>



57

Communicating Conscious Business Practice at an Ecologically-Conscious Architectural Studio: A Case of Mr. Zero

Pinaki Nandan Pattnaik (NALSAR University of Law, India) and Mahendra Kumar Shukla (NALSAR University of Law, India)

Source Title: Effective Strategies for Communicating Insights in Business (/book/effective-strategies-communicating-insights-business/244299)

Copyright: © 2021

Pages: 12

DOI: 10.4018/978-1-7998-3964-4.ch008

\$29.50

OnDemand PDF
Download:

☒ Available

[Current Special Offers](#)

Abstract

This chapter presents an exploratory case study of how Mr. Zero, a pencil developed by the Ecologically Conscious Architectural Studio (ECAS) at Auroville, India integrates product micro-culture and the concept of conscious business in deriving sustainable practices with an aim of achieving a sustainable future. Through this chapter, the authors make an attempt at developing a deeper understanding of the concept of conscious business and its importance. Finally, the authors, through a qualitative analysis of a case study of Mr. Zero, map the practice of connecting conscious business movement through the adoption of product micro-culture at ECAS to evaluate its applicability in modern day business. At the end, the authors record findings on the interplay between product micro-culture and the conscious business movement for adoption by other businesses or even adaptation by others depending upon the context for viable sustainable solutions.

Chapter Preview

Top

Introduction

"The world needs more love to awaken the lost human coefficient, and in the process environmental issues shall find its best solution." - Mr. ZERO

In his book, *An Inquiry into the Nature and Causes of the Wealth of Nations*, Volume 2, Smith (1778) states that it is self-interest, that empowers the invisible hand that eventually leads to economic as well as the overall prosperity of the society. Following self-interest, capitalism promulgates a state of affairs where workers work for wages and capital gets income (Jahan & Mahmud, 2015; Scott, 2009). Such practices enable a harmonious existence and provides for political freedom (Friedman, 2009) by taking out poverty from around the world (Palmer, 2011). With time, self-interest distorts into selfishness, leading it to becoming over-glorified. To that extent, people have increasingly become hypocritical even about other statements on morality (Smith, 1759).

Mackey (2011) identifies that businesses are neglecting the higher needs of human nature like altruism. Organizations, not only generate monetary wealth, but also produce emotional, spiritual, and intellectual wealth. Conscious organizations spread prosperity and joy among all their stakeholders and consistently innovate to create and deliver ever greater value for each one of them (Asphalt, 2020). These organizations succeed in the long run at a significantly higher level and with a considerably broader definition of success than traditional business (Sisodia, 2013).

As Hamel (2008) states, organizations cannot purchase peoples' creativity, passion and enthusiasm; they need to earn them, and most have not demonstrated deserving of them. Conscious organizations discharge this enormous source of renewable, generative human energy into the world. This, more than anything else, is the reason of their sustained success. Any individual or business can practice what they do either consciously or unconsciously. Such organizations that practice business consciously, settle on better choices since they have a complete comprehension of the considerable number of facts, undistorted by individual agendas. Additionally, the clarity that accompanies conscious business practices drives specifically to higher individual fulfilment from their work (Khalsa, 2010).

This chapter attempts to describe the concept and importance of conscious business movement. It also proposes its practice through product micro-culture. The authors, though a case study of Mr. Zero map the practices of conscious business movement at ECAS.

Top

Conscious Business: A Conceptual Understanding

"Being conscious means to be mindful and awake. Living consciously means to be open to perceiving the world around and within us, to understand our circumstances, and to decide how to respond to them in ways that honor our needs, values, and goals [. . .]. A conscious business fosters peace and happiness in the individual, respect and solidarity in the community, and mission accomplishment in the organization" (Kofman, 2008)

At times, conscious business and conscious capitalism are seen in usage as synonyms. However, conscious capitalism only refers to a wider sense of doing business (Hess, & Fuller, 2017; Srinivasan, 2011) whereas, conscious business is not just a business strategy or business model rather it is a comprehensive philosophy of doing business (Franceschelli, Santoro & Candelo, 2018). Available literature indicates the need for and values of corporates having a strong set of ideals as well a purpose to pursue. But, it is also to be noted that there are several others who affect as well as get affected by the decisions that are taken in corporates. Focusing on employees and customers is a vital aspect of the business, although this is not the only area of focus (Akbar, Jin, & Salam, (2018). Conscious capitalism suggests that businesses and business leaders should undertake activities that accrue benefits to all stakeholders viz. Society, Partners, Investors, Customers, Employees and Environment (Yangzom & Singh, 2019). A conscious business, on the other hand, endeavours to achieve a common set of benefits that satisfy all stakeholders. In the order of the priority of stakeholders, the society is placed at the top (Sisodia, 2013).

Complete Chapter List

Search this Book:

[Reset](#)

[Table of Contents](#)

[View Full PDF \(/pdf.aspx?tid=278412&ptid=244299&ctid=15&t=Table of Contents&isxn=9781799839644\)](#)

[Detailed Table of Contents](#)

[View Full PDF \(/pdf.aspx?tid=278413&ptid=244299&ctid=15&t=Detailed Table of Contents&isxn=9781799839644\)](#)

[Foreword](#)

[View Full PDF \(/pdf.aspx?tid=278414&ptid=244299&ctid=15&t=Foreword&isxn=9781799839644\)](#)

Paul Hartman (RGBSI Aerospace & Defense, USA)

[Preface](#)

[View Full PDF \(/pdf.aspx?tid=278415&ptid=244299&ctid=15&t=Preface&isxn=9781799839644\)](#)

Ross Jackson (Wittenberg University, USA), Amanda Reboulet (Jacoulet, USA)

[Acknowledgment](#)

[View Full PDF \(/pdf.aspx?tid=278416&ptid=244299&ctid=15&t=Acknowledgment&isxn=9781799839644\)](#)

[Chapter 1](#)

The Communication and Translation of Data and Analytics-Driven Insights (/chapter/the-communication-and-translation-of-data-and-analytics-driven-insights/278417) (pages 1-12)

Brian Heath (Heath Analytics, USA)

[Preview Chapter](#) **\$29.50**
(/viewtitlesample.aspx?tid=278417&ptid=244299&t=The Communication and Translation of Data and Analytics-Driven Insights&isxn=9781799839644) [Add to Cart](#)

[Chapter 2](#)

Effective Communication Approaches for Decision Analytics: An Exploration of Strategies (/chapter/effective-communication-approaches-for-decision-analytics/278418) (pages 13-31)

Amanda Reboulet (Jacoulet, USA), Ross A. Jackson (Wittenberg University, USA)

[Preview Chapter](#) **\$29.50**
(/viewtitlesample.aspx?tid=278418&ptid=244299&t=Effective Communication Approaches for Decision Analytics: An Exploration of Strategies&isxn=9781799839644) [Add to Cart](#)

[Chapter 3](#)

From Management 1.0 to Management 3.0 and Beyond (/chapter/from-management-10-to-management-30-and-beyond/278419) (pages 32-52)

Eduardo Espinheira (Porto Business School, Portugal), Fernando Almeida (Polytechnic Institute of Gaya, Portugal)

[Preview Chapter](#) **\$29.50**
(/viewtitlesample.aspx?tid=278419&ptid=244299&t=From Management 1.0 to Management 3.0 and Beyond&isxn=9781799839644) [Add to Cart](#)

Chapter 4

Process Improvement Through Visual Management: An Insight Management Tool? (/chapter/process-improvement-through-visual-management/278420) (pages 53-66)

Julio Silva (Faculty of Economics, University of Algarve, Portugal), Silvia Fernandes (FE, Cinturs, University of Algarve, Portugal), Paula Ventura Martins (FCT, Cinturs, University of Algarve, Portugal)

Preview Chapter **\$29.50**
 (/viewtitlesample.aspx? Add to Cart
 id=278420&ptid=244299&t=Process
 Improvement
 Through Visual
 Management: An
 Insight
 Management
 Tool?
 &isxn=9781799839644)

Chapter 5

Neutralizing Maleficent Effects of COVID-19 Through Entrepreneurship: Peeping Through the Lens of Communication (/chapter/neutralizing-maleficent-effects-of-covid-19-through-entrepreneurship/278421) (pages 67-86)

Manpreet Arora (Central University of Himachal Pradesh, Dharamshala, India), Roshan Lal Sharma (Central University of Himachal Pradesh, Dharamshala, India)

Preview Chapter **\$29.50**
 (/viewtitlesample.aspx? Add to Cart
 id=278421&ptid=244299&t=Neutralizing
 Maleficent
 Effects of
 COVID-19
 Through
 Entrepreneurship:
 Peeping Through
 the Lens of
 Communication&isxn=9781799839644)

Chapter 6

Neuroeconomics as a Factor in the Decision-Making of Women Entrepreneurs in Developing Countries (/chapter/neuroeconomics-as-a-factor-in-the-decision-making-of-women-entrepreneurs-in-developing-countries/278422) (pages 87-100)

Jovanna Nathalie Cervantes-Guzmán (Centro Universitario de Ciencias Económico Administrativas, Universidad de Guadalajara, Mexico)

Preview Chapter **\$29.50**
 (/viewtitlesample.aspx? Add to Cart
 id=278422&ptid=244299&t=Neuroeconomic
 as a Factor in the
 Decision-Making
 of Women
 Entrepreneurs in
 Developing
 Countries&isxn=9781799839644)

Chapter 7

Racial Differences in Perceptions of Shared Leadership Among IT Managers (/chapter/racial-differences-in-perceptions-of-shared-leadership-among-it-managers/278423) (pages 101-128)

Eugene J. Petrie (University of Phoenix, USA), Auslyn G. Nieto (University of Phoenix, USA), Kate Andrews (Walden University, USA)

Preview Chapter **\$29.50**
 (/viewtitlesample.aspx? Add to Cart
 id=278423&ptid=244299&t=Racial
 Differences in
 Perceptions of
 Shared
 Leadership
 Among IT
 Managers&isxn=9781799839644)

Chapter 8

Communicating Conscious Business Practice at an Ecologically-Conscious Architectural Studio: A Case of Mr. Zero (/chapter/communicating-conscious-business-practice-at-an-ecologically-conscious-architectural-studio/278424) (pages 129-140)

Pinaki Nandan Pattnaik (NALSAR University of Law, India), Mahendra Kumar Shukla (NALSAR University of Law, India)

Preview Chapter **\$29.50**
 (/viewtitlesample.aspx? Add to Cart
 id=278424&ptid=244299&t=Communicating
 Conscious
 Business
 Practice at an
 Ecologically-
 Conscious
 Architectural
 Studio: A Case of
 Mr.
 Zero&isxn=9781799839644)

Chapter 9

Communicating in Media Dark Areas (/chapter/communicating-in-media-dark-areas/278425) (pages 141-156)

Dinesh Kumar (Jagran Lakecity University, India), Punam Gupta (Career College, India)

Preview Chapter **\$29.50**
 (/viewtitlesample.aspx? Add to Cart
 id=278425&ptid=244299&t=Communicating
 in Media Dark
 Areas&isxn=9781799839644)

Chapter 10

Benefits of a Liberal Arts Education on Effective Business Communication (/chapter/benefits-of-a-liberal-arts-education-on-effective-business-communication/278426) (pages 157-168)

Rachel Wilson (Wittenberg University, USA), Amanda Reboulet (Jacoulet, USA)

Preview Chapter
(/viewtitlesample.aspx? Add to Cart
id=278426&ptid=244299&t=Benefits
of a Liberal Arts
Education on
Effective
Business
Communication&isxn=9781799839644)

\$29.50

Chapter 11

Prelude of Investment: Freshman's Dilemma in the Insurance Sector Investments (/chapter/prelude-of-investment/278427) (pages 169-189)

Shilpi Gupta (Amity University, Chhattisgarh, India), Monica Shrivastava (Shri Shankaracharya Technical Campus (SSGI), Chhattisgarh, India)

Preview Chapter
(/viewtitlesample.aspx? Add to Cart
id=278427&ptid=244299&t=Prelude
of Investment:
Freshman's
Dilemma in the
Insurance Sector
Investments&isxn=9781799839644)

\$29.50

Chapter 12

Driving Insights via Processes of Socioemotional Being and Becoming (/chapter/driving-insights-via-processes-of-socioemotional-being-and-becoming/278428) (pages 190-206)

Catherine Hayes (University of Sunderland, UK), Ian Corrie (University of Cumbria, UK), Toby Lloyd Rowland (Defence Medical Academy, UK)

Preview Chapter
(/viewtitlesample.aspx? Add to Cart
id=278428&ptid=244299&t=Driving
Insights via
Processes of
Socioemotional
Being and
Becoming&isxn=9781799839644)

\$29.50

Chapter 13

Becoming Who You Are Through Authentic Organizational Communication (/chapter/becoming-who-you-are-through-authentic-organizational-communication/278429) (pages 207-222)

Ross Jackson (Wittenberg University, USA)

Preview Chapter
(/viewtitlesample.aspx? Add to Cart
id=278429&ptid=244299&t=Becoming
Who You Are
Through
Authentic
Organizational
Communication&isxn=9781799839644)

\$29.50

Learn More

About IGI Global (/about/) | Partnerships (/about/partnerships/) | COPE Membership (/about/memberships/cope-membership/) | Open Communication (/about/open-communication/) |
(/about/staff/job-opportunities/) | FAQ (/faq/) | Management Team (/about/staff/)

About the Contributors

Librarians (/librarians/) | Authors/Editors (/publish/) | Distributors (/distributors/) | Instructors (/course-adoption/) | Translators (/about/rights-
permissions/translation-rights/)

Index

Media Center

Webinars (/symposium/) | Blogs (/newsroom/) | Catalogs (/catalogs/) | Newsletters (/newsletters/)

Policies

Privacy Policy (/about/rights-permissions/privacy-policy/) | Cookie & Tracking Notice (/cookies-agreement/) | Fair Use Policy (/about/rights-
permissions/content-reuse/) | Accessibility (/accessibility/) | Ethics and Malpractice (/about/rights-permissions/ethics-malpractice/)

(http://www.facebook.com/pages/IGI-Global/138206739534176?ref=sgm)

(http://twitter.com/igiglobal)

(https://www.linkedin.com/company/igi-global/)
(http://www.forgotten-children.org)

(https://publicationethics.org/category/publisher/igi-global)

of WFCF

Learn More

101 (45) (58)

AVTAR SINGH'S
**CONTRACT
& SPECIFIC RELIEF**

Rajesh Kapoor

Thirteenth Edition



EBC

India's leading law information provider

Acc. No.

0 2 7 7 2 3

AVTAR SINGH'S
LAW OF CONTRACT
(A Study of the Contract Act, 1872)
and
SPECIFIC RELIEF

RAJESH KAPOOR

LLB (Symbiosis Pune), LLM (King's College University of London)

Assistant Professor

NALSAR University of Law

EBC

Lucknow | Delhi | Prayagraj | Guwahati
Bengaluru | Ahmedabad | Nagpur

Brief Contents

<i>Section-wise Contents</i>	xxxvii
<i>Table of Cases</i>	xlv

PART I

GENERAL PRINCIPLES

1. Agreement, Contract and Proposal	3
2. Acceptance	25
3. Consideration	100
4. Capacity to Contract	154
5. Free Consent	178
6. Mistake	224
7. Legality of Object	253
8. Discharge of Contract	346
9. Discharge by Breach	444
10. <u>Certain Relations Resembling Those Created by Contract</u>	556

PART II
SPECIFIC CONTRACTS

11. Contract of Indemnity	591
12. Guarantee	599
13. Bailment	668
14. Pledge	711
15. Agency	733

PART III
LAW OF SPECIFIC RELIEF

16. Specific Relief Act, 1963	839
<i>Subject Index</i>	967

TAXMANN'S

Indian Competition Law

A Comprehensive Section-wise
Commentary on Competition Act 2002

Adv. Gautam Shahi
Dr. Sudhanshu Kumar

July
2021

60-61

Acc. No.

DOH478

GUIDE TO CAPITAL MARKET AND SECURITIES LAW

DR. SUDHANSHU KUMAR AND ALOK VERMA

Foreword by

Siddharth Raja
Co-founder and Partner
Saakshya Law, Advocates



THOMSON REUTERS

CONTENTS

<i>Foreword</i>	xvii
<i>Preface</i>	xxi
<i>Acknowledgments</i>	xxiii
<i>Table of Cases</i>	xxv
<i>Table of Statutes</i>	xxxv
 CHAPTER 1 INTRODUCTION TO CAPITAL MARKET	1
1.1 FINANCIAL SYSTEM AND ITS STRUCTURE.....	1
1.1.1 Structure of Financial System	1
1.1.2 Elements of Financial System	2
1.1.3 Role and Function of Financial System	7
1.1.4 Role of Financial Regulation.....	8
1.2 INDIAN FINANCIAL SYSTEM: A HISTORICAL RETROSPECT	8
1.3 FINANCIAL SECTOR LEGISLATIVE REFORMS COMMISSION (FSLRC)	11
1.4 BROAD ORGANIZATION OF CAPITAL MARKET	15
1.5 THE SECURITIES AND EXCHANGE BOARD OF INDIA.....	16
1.5.1 Interpretation of the SEBI Act, 1992.....	16
1.5.2 SEBI and IOSCO	17
1.5.3 Capital Market Asset: 'Securities'	18
1.5.4 Jurisdiction of SEBI.....	20
1.5.5 Functions of the Board	21
1.5.6 SEBI Informal Guidance	22
1.5.7 Person Associated with Securities Market	23

1.5.8	Duty of the Board to Protect the Interests of Investors.....	24
1.5.9	Powers of SEBI.....	27
1.5.9.1	Power to Call for Information.....	27
1.5.9.2	Power to Levy Fees	28
1.5.9.3	Power to Conduct Research	29
1.5.9.4	Sections 11(4) and 11B as Sister Provisions.....	29
1.5.9.5	Power of Disgorgement	33
1.5.9.6	Power to Order Investigation.....	35
1.5.9.7	Penalties and Adjudication.....	36
1.5.9.8	Adjudication and Appeal	38
1.5.9.9	Settlement of Administrative and Civil Proceedings.....	39
1.5.10	Securities Appellate Tribunal.....	42
1.5.10.1	Appeal from Quasi-Judicial Orders.....	43
CHAPTER 2 REGULATION OF CAPITAL MARKET		
	INTERMEDIARIES	45
2.1	INTRODUCTION	45
2.1.1	SEBI (Intermediaries) Regulations, 2008	45
2.1.1.1	Registration of Intermediaries and Disclosure of Information.....	48
2.1.1.2	General Obligations of Intermediaries	49
2.1.1.3	Criteria for Determining a 'Fit and Proper Person'	50
2.2	ROLE AND REGULATION OF PRIMARY MARKET	
	INTERMEDIARIES.....	55
2.2.1	Registration and Regulation of Merchant Bankers.....	56
2.2.1.1	History of Merchant Banking.....	57
2.2.1.2	Role of Merchant Banker in the Primary Market (Issue Process).....	57
2.2.1.3	Other Activities of the Merchant Banker.....	62
2.2.1.4	Registration of Merchant Bankers	63
2.2.1.5	General Obligations and Responsibilities.....	64
2.2.1.6	Duties of the Merchant Banker in Issue Process.....	66

2.2.2	Registrars to an Issue and Share Transfer Agents	75
2.2.2.1	<i>Role of Registrars and Transfer Agents in Capital Market.....</i>	75
2.2.2.2	<i>Regulating the Operation and Registration of RTAs in India</i>	77
2.2.2.3	<i>Mandatory Obligations of RTAs.....</i>	81
2.2.2.4	<i>'RAIN'</i>	85
2.2.3	Bankers to an Issue.....	85
2.2.3.1	<i>Role of BTI in Capital Market</i>	86
2.2.3.2	<i>BTI and ASBA</i>	89
2.2.3.3	<i>Regulation of Bankers to an Issue in India.....</i>	91
2.2.3.4	<i>Obligations and Responsibilities of BTI.....</i>	92
2.2.4	Underwriters.....	96
2.2.4.1	<i>Role of Underwriter in Capital Market.....</i>	96
2.2.4.2	<i>Types of Underwriting.....</i>	99
2.2.4.3	<i>Regulating the Operation of Underwriters in Capital Market</i>	100
2.2.5	Debenture Trustees	103
2.2.5.1	<i>Issue of Debentures and Appointment of Debenture Trustees.....</i>	103
2.2.5.2	<i>Disqualification of a Debenture Trustee.....</i>	105
2.2.5.3	<i>Role of a Debenture Trustee (DT) in Capital Market...</i>	107
2.2.5.4	<i>Regulation of the Operation of Debenture Trustees.....</i>	112
2.2.5.5	<i>Debenture Trustees and Credit Rating Agencies.....</i>	113
2.2.5.6	<i>Unregistered DT services.....</i>	114
2.2.5.7	<i>Deficiency in Service – Claim before Consumer Forum</i>	115
2.3	ROLE AND REGULATION OF SECONDARY MARKET INTERMEDIARIES.....	116
2.3.1	Stock Brokers	117
2.3.1.1	<i>Role of Stock Brokers in Capital Market</i>	117
2.3.1.2	<i>History of Stock Broking in India</i>	117
2.3.1.3	<i>Types of Stock Brokers.....</i>	118

2.3.1.4	<i>Role of Stock Brokers in the Primary Market.....</i>	118
2.3.1.5	<i>Regulation of Stock Brokers</i>	119
2.3.1.6	<i>General Obligations and Responsibilities of Stock Brokers</i>	125
2.3.1.7	<i>Payment of Fees (Corporatization and Subsidiary Situation)</i>	133
2.3.1.8	<i>Transaction between Clients and Brokers</i>	140
2.3.1.9	<i>Sub-brokers.....</i>	146
2.3.1.10	<i>Market Access through Authorized Persons.....</i>	147
2.3.2	<i>Recognition and Regulation of Stock Exchanges.....</i>	150
2.3.2.1	<i>Corporatization and Demutualization of Stock Exchanges</i>	150
2.3.2.2	<i>Recognized Stock Exchange (RSE).....</i>	153
2.3.2.3	<i>Regulation of Stock Exchanges.....</i>	154
2.3.2.4	<i>Listing of Securities.....</i>	156
2.4	OTHER INTERMEDIARIES OF THE SECURITIES MARKET	156
2.4.1	Portfolio Management and Portfolio Managers.....	156
2.4.1.1	<i>Portfolio Management</i>	156
2.4.1.2	<i>Types of PMS and difference with Mutual fund</i>	157
2.4.1.3	<i>Objectives and Advantages of PMS</i>	159
2.4.1.4	<i>Regulating the Business of Portfolio Management in India.....</i>	160
2.4.1.5	<i>Cases Related to Unregistered PM Activities.....</i>	167
2.4.2	Investment Advisers (IA)	169
2.4.2.1	<i>Regulation of Investment Advisers</i>	170
2.4.2.2	<i>SEBI (Investment Advisers (IA)) Regulations, 2013</i>	171
2.4.2.3	<i>Obligations of IA</i>	178
2.4.2.4	<i>Segregation of Execution Services and SEBI Consultation Papers</i>	182
2.4.2.5	<i>Self-Regulatory Organization (SRO) in IA Market</i>	184
2.4.2.6	<i>Unregistered Investment Advisory Services.....</i>	185

2.4.3	Research Analyst	186
2.4.3.1	Registration of RAs.....	188
2.4.3.2	Unregistered RA services.....	189
2.4.3.3	Regulation of RAs.....	189
2.4.3.4	Obligations of RAs.....	194
2.4.3.5	SRO in RA Market	195
2.5	DEPOSITORY SYSTEM IN INDIA	195
2.5.1	Indian Depository System.....	195
2.5.2	Services offered by the Depository.....	197
2.5.2.1	Legal Obligation and Process of De-materialization.....	197
2.5.2.2	Re-materialization	200
2.5.2.3	Market Transfers	201
2.5.2.4	Transmission of Shares.....	203
2.5.2.5	Nomination of Securities.....	204
2.5.2.6	Fungibility.....	204
2.5.3	Regulating the Operation of Depositories and Depository Participants.....	204
2.5.4	Liability of Depositories	208
2.5.5	Depository Participants.....	208
	CHAPTER 3 CREDIT RATING.....	212
3.1	CREDIT RATING AGENCIES.....	212
3.2	IMPORTANCE OF CREDIT RATING	213
3.3	FACTORS AFFECTING CREDIT RATINGS	214
3.4	INSTRUMENTS FOR RATING	214
3.5	NATURE AND LIMITATIONS OF CREDIT RATING	215
3.6	CREDIT RATING AGENCIES.....	216
3.6.1	Origin and Development.....	217
3.6.2	Payment Models of Operations	219
3.6.3	Rise of Credit Rating Agencies in India	220

3.7	SEBI (CREDIT RATING AGENCIES) REGULATIONS, 1999	224
3.7.1	Registration	225
3.7.2	Obligations	227
3.7.3	Disclosures	227
3.7.4	Conflict of Interest	228
3.7.5	Accountability and Enforcement.....	228
3.8	REQUIREMENT OF CREDIT RATING UNDER SEBI REGULATIONS	229
3.9	IPO GRADING	230
3.10	ENHANCED STANDARDS FOR CREDIT RATING AGENCIES	235
3.10.1	High Standards and Fairness in Conduct of Business and Liability of CRAs	236
3.10.2	Duty of Care, Skill and Diligence.....	238
3.10.3	Code of Conduct v. Agreement between Parties.....	241
	CHAPTER 4 INVESTMENT FUND SCHEMES	243
4.1	INTRODUCTION	243
4.2	COLLECTIVE INVESTMENT SCHEME: OVERVIEW	243
4.2.1	Brief History of CIS in the India	244
4.2.2	Defining a Collective Investment Scheme	245
4.2.3	Parties to a Collective Investment Scheme	246
4.2.4	Registration and Operation of a CIMC.....	247
4.2.5	Appointment, Role and Responsibilities of a Trustee.....	248
4.2.6	Launching a CIS	250
4.2.7	Judicial Developments.....	253
4.3	MUTUAL FUNDS: OVERVIEW	267
4.3.1	Historical Account of Mutual Funds in India.....	267
4.3.2	Structure of a Mutual Fund.....	271
4.3.3	Legislative Framework of Mutual Funds in India	272
4.3.4	Rights, Obligations and Responsibilities of Parties to a Mutual Fund	273

4.3.5	Requirement of Minimum Investors in the Scheme.....	276
4.3.6	Investment Conditions and Restrictions on Borrowings by Mutual Funds.....	276
4.3.7	Types of the Scheme/Fund.....	277
4.3.8	Classification of Mutual Funds Based on Maturity Period.....	278
4.3.9	Classification of Mutual Funds Based on Investment Objective of the Fund	278
4.3.10	Investment Plans/Options Available to Investors	281
4.3.11	Investment Options.....	282
4.3.12	Listing of Mutual Fund Scheme and Continuous Disclosure Requirement.....	282
4.3.13	Benefits of Investing in Mutual Funds.....	283
4.4	ALTERNATE INVESTMENT FUND: OVERVIEW.....	284
4.4.1	History of AIFs in India	286
4.4.2	Structural and Regulatory Overview of AIFs in India	291
4.4.3	Categories of AIFs	292
4.4.4	Registration Requirements.....	295
4.4.5	Investments in AIFs	297
4.4.5	Investments by AIFs.....	300
4.4.6	Winding Up.....	306
4.5	BUSINESS TRUSTS: OVERVIEW	306
4.5.1	Overview of REIT and InvIT market in India.....	307
4.5.2	Business Trusts in India.....	308
4.5.3	REITs in India	310
4.5.3.1	Structure of REITs in India	310
4.5.3.2	Parties to the REIT	311
4.5.3.3	Investment by the REIT.....	313
4.5.3.4	Distributions by the REIT	314
4.5.4	InvITs in India.....	315
4.5.4.1	Structure of InvITs.....	315
4.5.4.2	Parties to the InvIT.....	316

4.5.4.3	Investment by the InvIT	319
4.5.4.4	Distributions by the InvIT	320
4.5.4.5	Current Issues and Beyond	321
CHAPTER 5 RESOURCE MOBILIZATION IN DOMESTIC MARKET		323
5.1	RAISING OF CAPITAL BY ISSUE OF EQUITY	323
5.2	HISTORICAL BACKGROUND AND DEVELOPMENT OF SEBI REGULATIONS	323
5.3	TYPES OF INVESTORS	324
5.4	INITIAL PUBLIC OFFER (IPO)	325
5.4.1	Legal Framework for IPO	327
5.5	FURTHER/FOLLOW ON PUBLIC OFFER (FPO)	350
5.5.1	Reasons for Making an FPO	350
5.5.2	Process of Making a Further Public Offer	351
5.6	RIGHTS ISSUE OF SHARES	363
5.7	BONUS ISSUE OF SHARES	375
5.8	QUALIFIED INSTITUTIONAL PLACEMENT	379
5.8.1	Introduction – Meaning and Reasons	379
5.8.2	Eligibility Conditions	382
5.8.3	Appointment of Intermediaries and Placement Document	384
5.8.4	Pricing Mechanism	385
5.8.5	Application, Allotment and Allottees	385
5.8.6	Tenure and Transferability	388
5.9	ALTERNATE MEANS OF RESOURCE MOBILIZATION	389
5.9.1	Issue and Listing of Debt Securities	389
5.9.2	Private Placement of Debt Instruments	396
5.10	CROWD FUNDING	401
5.10.1	Reasons for Crowd Funding	401
5.10.2	TYPES OF CROWD-FUNDING	402
5.10.3	SEBI on Equity Crowd Funding	403

5.10.4 Crowd Funding in USA.....	404
5.10.5 Crowd Funding in UK.....	406
5.10.6 Major Issues in India.....	406
5.11 SHARE-BASED EMPLOYEE BENEFITS	408
5.11.1 Introduction – Meaning and Reasons	408
CHAPTER 6 RESOURCE MOBILIZATION IN INTERNATIONAL CAPITAL MARKET.....	419
6.1 INTRODUCTION	419
6.2 VARIOUS METHODS AVAILABLE FOR FOREIGN RESOURCE MOBILIZATION	420
6.2.1 External Commercial Borrowing.....	420
6.3 LEGISLATIVE AND REGULATORY FRAMEWORK OF ECBS IN INDIA.....	422
6.3.1 Routes for Raising Fund under ECB Framework	423
6.3.2 Fund Raising under the New ECB Framework.....	423
6.3.2.1 Forms of ECB.....	423
6.3.2.2 Eligible Borrowers	424
6.3.2.3 Recognized Lenders.....	425
6.3.2.4 End Use Restrictions.....	426
6.3.2.5 Minimum Average Maturity Period (MAMP).....	427
6.3.2.6 Hedging Requirement.....	427
6.3.2.7 Security for Raising ECB.....	427
6.3.2.8 Parking of ECB Proceeds.....	429
6.3.2.9 Reporting Requirements.....	429
6.3.2.10 Conversion of ECB into Equity.....	429
6.3.3 Special Dispensations for Start-ups under the New ECB Framework.....	430
6.3.3.1 ECB Facility for Startups	431
6.3.3.1.1 Eligible Entities.....	431
6.3.3.1.2 Form and Currency of Borrowing.....	432
6.3.3.1.3 Limits of Borrowing.....	432

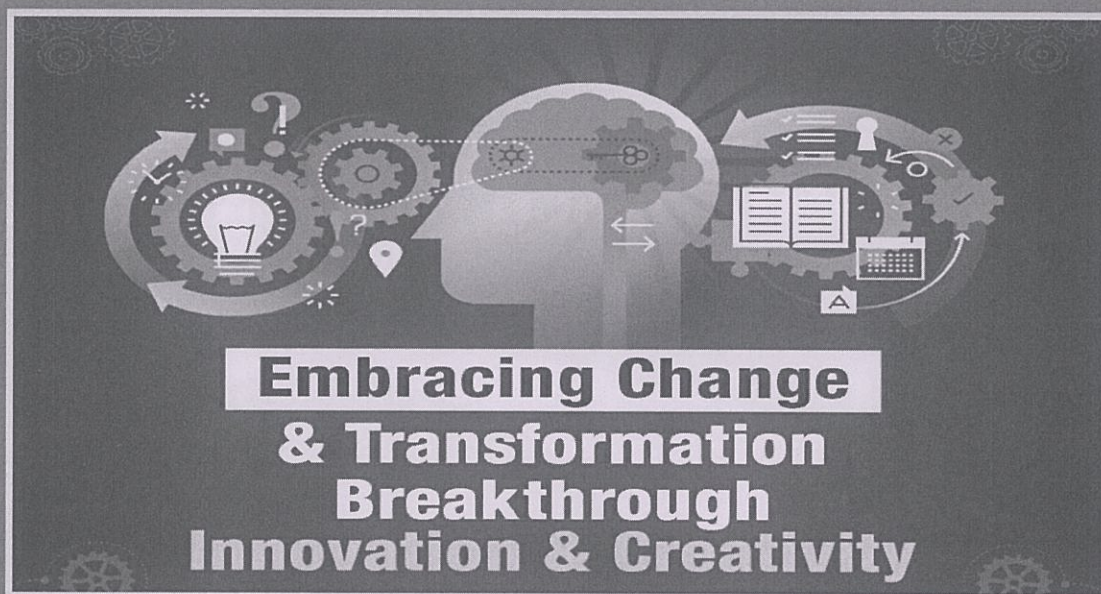
6.4	REGULATORY FRAMEWORK FOR ISSUANCE OF FCCBS	432
6.5	REGULATORY FRAMEWORK FOR ISSUANCE OF FCEBS.....	434
6.6	FUND RAISING THROUGH ISSUANCE OF DEPOSITORY RECEIPTS	436
6.6.1	Listing and Access to Overseas Capital Market	436
6.6.2	Depository Receipt.....	438
6.6.3	Regulatory Framework for Issuing DRs in India	439
6.6.4	Framework for Issue of DRs under SEBI Laws.....	441
6.6.4.1	Eligible Issuer.....	441
6.6.4.2	Permissible Securities	442
6.6.4.3	Permissible Holders	442
6.6.4.4	Jurisdictions for Issue of DRs and Permissible Stock Exchanges	443
6.6.4.5	Pricing.....	444
6.6.4.6	End Use Restrictions.....	444
6.6.4.7	Public Shareholding and Voting Rights	444
6.6.4.8	Market Abuse	445
6.6.4.9	Filings/Approvals from the SEBI and the Indian Stock Exchanges.....	445
6.6.4.10	Voting Rights.....	445
6.6.4.11	Obligations on Indian Depository, Foreign Depository and Domestic Custodian.....	446
6.6.5	Regulatory Framework for Issue of DRs under the Companies Act	446
	CHAPTER 7 LISTING AND DELISTING OF SHARES.....	449
7.1	LISTING OF EQUITY SHARES.....	449
7.1.1	Listing Agreement vis-à-vis LODR.....	449
7.1.1.1	Minimum Public Shareholding Requirement for Listing	450
7.1.1.2	Non-compliance with MPS.....	452
7.1.1.3	Public sector undertakings.....	453
7.1.1.4	Approval of SEBI – Cases.....	454

w	Contents	xv
2	7.1.1.5 Aftermath of Gillette India.....	456
4	7.1.1.6 The Kotak Committee on Corporate Governance and Reclassification of Promoters.....	457
6	7.1.2 Listing Obligations and Disclosure Requirements	460
6	7.1.2.1 Common Obligations of Listed Entities.....	460
8	7.1.3 Overseas Listing of Indian Companies.....	461
9	7.2 DELISTING OF EQUITY SHARES FROM THE STOCK EXCHANGE	461
1	7.2.1 SEBI (Delisting of Equity Shares) Regulations, 2009.....	462
1	7.2.1.1 Restrictions on Delisting	463
2	7.2.1.2 Voluntary Delisting	463
2	7.2.1.3 Compulsory Delisting.....	469
3	7.2.1.4 Delisting of Small Companies	470
4	7.2.1.5 Power of the Board to Relax Strict Enforcement of the Regulations	472
4	7.2.1.6 Curious Cases of Fresenius Kabi and Astrazeneca	472
5	Index.....	477
5		
5		
6		
6		
9		
9		
9		
0		
2		
3		
4		

ISBN : 978-93-950596-0-7

Proceedings of
International Conference
on

**"Embracing Change & Transformation-Breakthrough
Innovation and Creativity"**



Edited by

**Dr. Amol Gawande
Dr. Atul Kumar**



DPU Dr. D. Y. Patil
B-School
Course Approved by AICTE, Ministry of HRD Govt. of India)



presents
**International Conference
On**

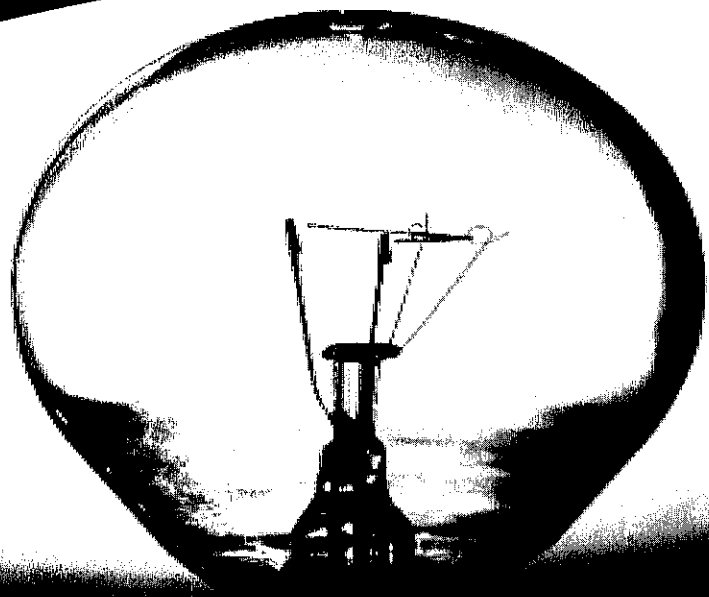
**“Embracing Change & Transformation-Breakthrough
Innovation and Creativity”**

23th to 25th March, 2021

*Organized by
IQAC & Research & Publication Cell*

DR. D. Y. PATIL B-SCHOOL, PUNE, INDIA

(Course Approved by AICTE, Ministry of HRD Govt. of India)



In Collaboration with
DR. SOETOMO UNIVERSITY, INDONESIA & AIMS, INDIA

Website : <https://bschool.dpu.edu.in>

📍 Online

**DPU Dr. D. Y. Patil
B-School**
(Course Approved by AICTE, Ministry of HRD Govt. of India)

Presents

CONFERENCE PROCEEDINGS

On

**EMBRACING CHANGE & TRANSFORMATION
BREAKTHROUGH INNOVATION AND CREATIVITY**

(Tuesday-Thursday, 23th - 25th March, 2021)

73	Perception of Pharmaceutical Sales Team Towards Digital /Virtual Promotion in the State of Telangana & Andrapradesh	S. A. Quader Dr. R. Radhika Dr. A. Kishore Kumar	798
74	A firm-level interrelationship between globalization and productivity: An indian experience	Balraj Verma Dr. Amit Srivastava	810
75	Understanding the effects of covid-19 in the indian automobile industry.	Ms. Geet Dr. Ombir Singh	823
76	Enhancing the Efficacy of Peer Learning among Post Graduate Students	Dr. Elizabeth George	824
77	Comparative Study of Influences by Select Emerging Markets on the Pharmaceutical Industry	Mrs. Deepali S. Surana Dr. Bipin R. Bankar	833
78	E-Consumer Conformity and Purchase Intention of Men and Women: A Conceptual Perspective after Covid	Aditya Yadav Kanishka Pathak Shiv Kumar Sharma	844
79	Impact of Online Education During Covid-19: A Study on Students of Higher Educational Institutions (Heis) from India	Mahanish Panda Anmol Kumar Kimmi Goyal	853
80	Emerging Trends of Immersive Media in India – Augmented Reality (Ar), Virtual Reality (Vr) nd Mixed Reality (Mr) Case	Manish Patel	863
81	Empirical Study of E-Commerce Trends During Covid-19 Pandemic: Advantages & Challenges	Shriram Kargaonkar Arpita Gorai, Vrukshani Channe, Akshta Madannavar	870
82	Cluster Development, an Alternate Strategy for Growth in Fashion Sector after Pandemic	Dr. J. P. Sampath Kumar Dr. BalaKoteswari Ms. Anitha Venkatraman	880
83	Redefine the Demand on Blended Learning Towards Academic and Corporate	J. Srinivasan	888
84	Literature Study on Antecedents of Loyalty in Low Cost Domestic Airlines Industry in India	Chandrashekhar S Gokhale Mrs. Chhabi Sinha	895
85	A study of online cloud meeting applications alternatives with special reference to higher education using tosis.	Arnav Chowdhury Sumit Zokarkar Deepesh Mamtani	902
86	A Study on the Digital Transaction Awareness among the Students' Community	Subhajit Basu Chowdhury Shubankar Mahapatra Sruti Shaw Amrita Mondal Priyanka Prasad	907
87	Evaluating the impact of digitalisation in healthcare service quality : an mixed method study in kolkata city.	Bikram Prasad Dr. Indrajit Ghosal.	912
88	Increment Organization's Business Model Resilience through Digital Initiatives	Prerana Talwar	918
89	Use of Facebook to Deliver the Best: Pandemic Time & over Dependence on the Medicines & Allied	Shaswati Saha Partha Sarathi Sarkar	932
90	Application of Predictive and Augmented Analytics in Sales & Marketing – What Researchers are Saying of Late?	Apoorv Soni Rupesh Andhrutkar Divyanshu Ojha	941

**PERCEPTION OF PHARMACEUTICAL SALES TEAM
TOWARDS DIGITAL /VIRTUAL PROMOTION IN THE STATE
OF TELANGANA & ANDRAPRADESH**

S. A. Quader

Research Scholar,
Hyderabad Business School, GITAM
University, Hyderabad, Telangana
syed.abdulquader5@gmail.com

Dr. R. Radhika

Associate Professor,
Hyderabad Business School, GITAM
University, Hyderabad, Telangana

Dr. A. Kishore Kumar

Assistant Professor
Department of Mgt. Studies, NALSAR University Law, Hyderabad,
Telangana, Country-India

Abstract:

Pharmaceutical companies cannot afford to perceive digital as an interesting bolt-on to traditional detailing and promotions in today's era. Instead, they have to make digital their fundamental approach to engaging customers. This paper discusses digital media use for customer engagement and highlights the Pharma sales team's perception. In today's scenario, not alone patients, physicians, pharmacists, and pharmaceutical companies but commissioners, regulators, and government authorities have a digital "self" that is more open to sharing their cyberspace than the real world. Unlike past key opinion leaders, doctors and patients are fond of communicating in the digital domain; thus, pharmaceutical companies must be part of the conversation. With changing pharmaceutical business dynamics from blockbusters to personalised medicines, the pharmaceutical industry cannot launch products only in traditional ways.

Call rates for medical representatives show downtrends in India due to pandemic, intense competition and practitioners' busy schedule. In speciality medicine, clinicians are interested in engaging with medically qualified scientists to obtain medical information rather than meeting with promotional representatives. Adopting digital platforms even partially can reduce promotional costs by 30 to 50 % of the traditional expenditure. So it senses able to use the digital channel as the default. The paper attempts to understand how digital media perceived by the pharmaceutical sales team; in the end, these sales promotion teams are responsible for ROI (return on investment), revenue generation, firm commercial viability, and customer engagement.

Keywords: Pharmaceutical, Customer Engagement, Digital Media and sales team.

I. INTRODUCTION

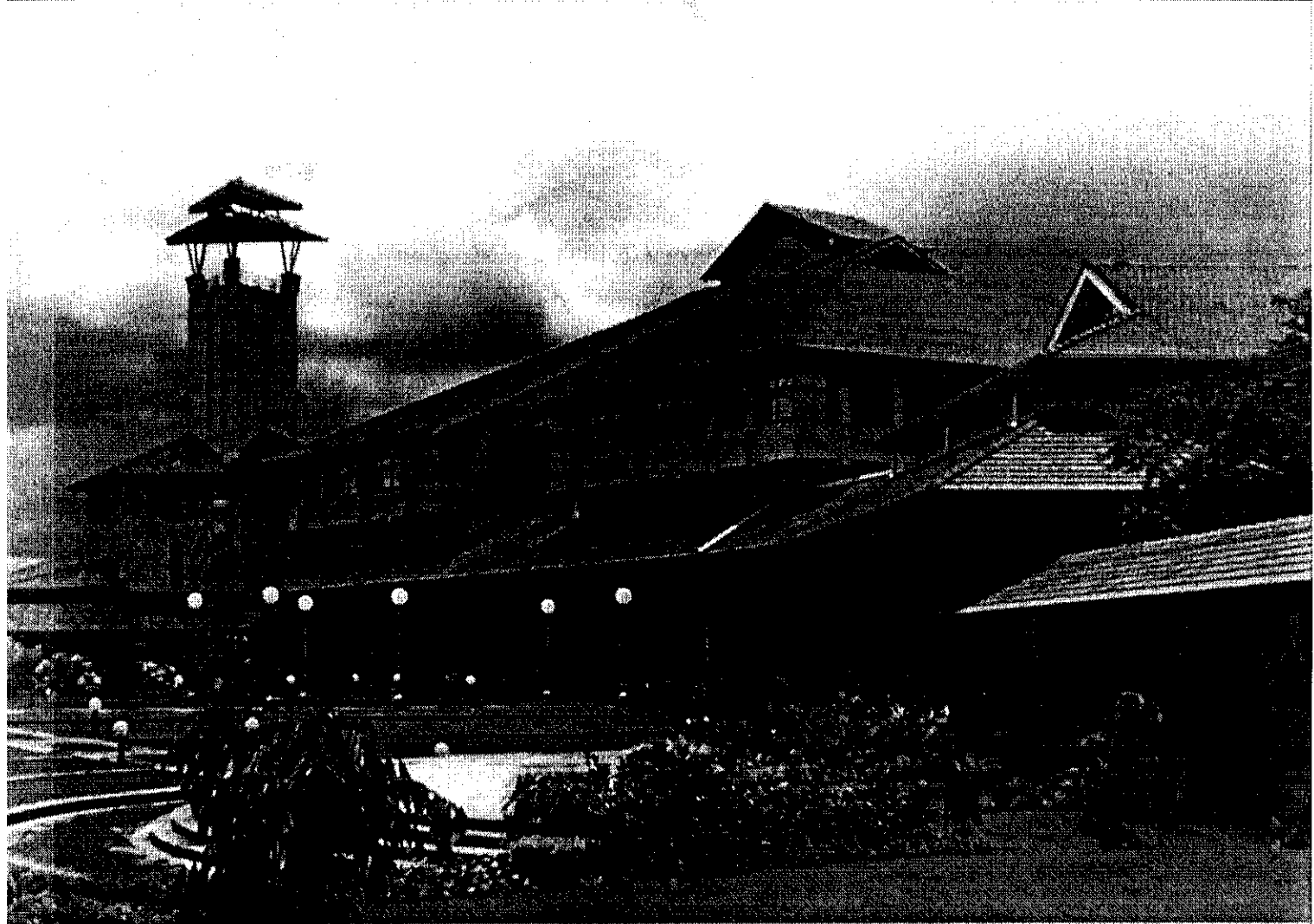
In the present era, digital marketing seems to most require surviving in this industrial world; India's pharmaceutical market reported in the world space as top five pharmaceutical markets. [1] In the pharmaceutical industry, digital marketing applied in many aspects. From the past few years, substantial growth in this industry has



PAN-IIM WORLD MANAGEMENT CONFERENCE

December 16-18, 2021
IIM Kozhikode, Kerala

CONFERENCE PROCEEDINGS



INDIAN INSTITUTE OF MANAGEMENT KOZHIKODE

Sl. No.	Author	Paper-Title	Page No.
29	Anagha Shukre	Effect of Superstitions On Consumers' Purchase Intentions	185-194
30	Deepti Jog and Frazer Rodrigues	Making meat, better: Indian Consumers' preference and acceptance for plant-based meat	195
31	Aby Abraham	Social Class Change through Consumption: Effect of Sanskritization and Taste Insertion	196-200
32	Francis Sebastian	The Linkage of Mirror Neuron Theory with Cause Related Marketing Efficacy: The Impact of Cause Category, Cause Type and Personal Values on Attitude Towards Corporate Image	201-207
33	Swati Tripathi and Divya Tripathi	Thriving in a Political Arena: Political Will as a Mediator of Organizational Structure and Political Tactics	208
34	Elham Malik	Buurtzorg Nederland: Elucidating An Elusive Homecare Model	209-222
35	Rashida Salmani, Geeta Mishra and Ashvini Kumar Singh	Burnt not Broken: An Essay on Acid Attacks in India and the Role of Stakeholders	223
36	Geethika Raj and Roopak Kumar Gupta	An optimistic view on HR digitalization: Organizational change perspective	224-234
37	Vinod Thakur and Sabyasachi Sinha	Family business governance: The requirement, role, and benefit of the family constitution as a governance mechanism in family businesses	235
38	Madhurima Basu and Anubha Shekhar Sinha	Glass-ceiling and the appointment of Women in the Board of Directors: A literature review and research agendas	236
39	Harmandeep Kaur and Khushdeep Dharni	Corporate Governance and Intellectual Capital: A Literature Review	237-242
40	Mainak Mazumdar and Boishampayan Chatterjee	The New Economic Geography and the Dynamics of Medium and Small Sized Towns in India	243
41	Kausik Gangopadhyay, Debasis Mondal and Thasni T	The Contribution of Structural Transformation in the Productivity Growth for India	244-258
42	Lokesh Posti	Informal Firm Size & Productivity: A pseudo panel data analysis	259
43	Udayan Sharma and Madhusudan Karmakar	Measuring minimum variance hedging effectiveness	260

CHILD RIGHTS IN INDIA

Contemporary Issues and Challenges

Dr. Afkar Ahmad & Dr. P P Mitra

SATYAM LAW
INTERNATIONAL

Contemporary Issues and Challenges

ABOUT THE BOOK

This book, *Child Rights in India: Contemporary Issues and Challenges*, is a comprehensive and up-to-date study of the current state of child rights in India. It covers a wide range of issues, including the legal framework, the implementation of child rights, and the challenges faced by the government and society. The book is written by Dr. Afkar Ahmad and Dr. P P Mitra, who are leading experts in the field of child rights. The book is a valuable resource for students, researchers, and practitioners in the field of child rights.

ABOUT THE AUTHORS

Dr. Afkar Ahmad is a Professor of Law at the Faculty of Law, Aligarh Muslim University, Aligarh. He is also a member of the National Commission for Protection of Child Rights (NCPCR). He has published several books and articles on child rights and has been involved in various child rights projects. **Dr. P P Mitra** is a Professor of Law at the Faculty of Law, Aligarh Muslim University, Aligarh. He is also a member of the National Commission for Protection of Child Rights (NCPCR). He has published several books and articles on child rights and has been involved in various child rights projects.



PRICE: RS. 695.00
\$ 50.00

SATYAM LAW
INTERNATIONAL

Contents

Foreword	v
Preface.....	vii
Acknowledgements.....	ix
Introduction.....	xi
1 Child Rights in India from a Cultural Perspective.....	1
<i>Prof. (Dr.) Prasannanshu</i>	
2 Child Trafficking in India Social Dimensions.....	7
<i>Dr. Sangeet Kumar</i>	
3 Fighting Child Marriage In India.....	27
<i>Dr Arundhati Bhattacharyya</i>	
4 Unravelling Child Abuse Definition, Aetiology and Effects.....	35
<i>Dr. Priyanka Khanduja Sharma</i>	
5 The Aesthetics of Child Labor Through The Prism of Markets, Law and Society	47
<i>Prakhar Ganguly</i>	
6 COVID 19 And Child Labour in India: An Appraisal	65
<i>Dr. Tauheed Alam</i>	
<i>Dr. S.M. Uzair Iqbal</i>	
7 Child Trafficking In India An Inclusive Development Approach	73
<i>Amit Ghosh</i>	
8 Securing The 'Right to Life' of The Girl Child Journey from Right to be Born, to Live with Dignity	85
<i>Dr. Sujata Bali</i>	
9 Rehabilitation and Social Re-Integration of Juveniles in Conflict with Law An Analysis of South Asian Legal Systems.....	97
<i>Prof (Dr.) Nuzhat Parveen Khan</i>	
<i>Md Enam Firdos</i>	
10 Concept of Child and Juvenile Justice Under the Juvenile Justice (Care and Protection of Children) Act, 2015 An Analysis.....	111
<i>Prof. (Dr.) Mohammad Tariq</i>	
<i>Sadaf Ali Khan</i>	
11 Rights of Child and Welfare of the Minor To Be Paramount Consideration under Hindu Law An Insight	125
<i>Prof.(Dr.) Rakesh Kr. Singh</i>	

Prakhar Ganguly

12 Demystifying the Best Interests Principle In Granting Child Custody in India	133
<i>Dr. Falzanur Rahman</i>	
13 Child Sexual Abuse A Critical Analysis of the Implementation of The Protection of Children from Sexual Offences Act, 2012	147
<i>Jayita Moulick</i>	
14 Justice for Children And Role of Judiciary in	

Certificate of Participation

This Certificate is Awarded to

Niharika Salar

In Recognition of the Contribution as Presenter of the Paper Entitled

Intellectual Property Negative Spaces: Is Legal Protection Not Required?

at the

THIRD IP & INNOVATION RESEARCHERS OF ASIA (IPIRA) CONFERENCE

24-27 March 2021

Held Online

Organized by the IP and Innovation Researchers of Asia (IPIRA) Network with:

WIPO Academy, World Intellectual Property Organization

World Trade Organization, IP, Government Procurement and Competition Division

Ahmad Ibrahim Kuliyah of Laws, International Islamic University Malaysia

Texas A&M University School of Law

Faculty of Law, Universitas Indonesia

School of Law, University of Geneva

Nanyang Business School, Nanyang Technological University

Irene Calboli

Prof. Dr. Irene Calboli
Chair, Scientific Committee
Third IPIRA Conference



The Annual Survey of State Laws in India

Editors

Amita Dhanda • Faizan Mustafa

ANDHRA PRADESH					
	ASSAM				
BIHAR		CHHATTISGARH	NCT OF DELHI		
	GUJARAT		JHARKHAND	KARNATAKA	
KERALA	MADHYA PRADESH		MAHARASHTRA		ODISHA
	PUNJAB	RAJASTHAN			TAMIL NADU
TELANGANA		UTTAR PRADESH		WEST BENGAL	

Volume 1 • April 2022

Contents

Introduction – Amita Dhanda and Faizan Mustafa	v
1. Andhra Pradesh – Anindita Mukherjee	1
2. Assam – Pritam Baruah and Manash Pratim Dutta	13
3. Bihar – Vivek Mukherjee and Akansha Singh	23
4. Chhattisgarh – Nikita Agarwal	35
5. Gujarat – Neha Pathakji	45
6. Jharkhand – Prerna	53
7. Karnataka – Neela Badami	64
8. Kerala – Noor Aameena	76
9. Madhya Pradesh – Aymen Mohammed	88
10. Maharashtra – N. Vasanthi	102
11. Odisha – Rahul Mohanty	114
12. Punjab – Subhashini Shriya	126
13. Rajasthan – Subhashini Shriya	140
14. Tamil Nadu – Rohan K. George	152
15. Telangana – Aymen Mohammed and Amita Dhanda	166
16. The National Capital Territory of Delhi – Pranav Verma	183
17. Uttar Pradesh – Faizan Mustafa	194
18. West Bengal – Anirban Chakraborty	208

Chapter 3

The Concept of Arbitral Award Under the New York Convention: A Comparative Study of English, French and Indian Approaches



Rajesh Kapoor

Abstract An arbitral award is the most important instrument in any arbitration proceedings. Nevertheless, a precise conceptual definition of award is a rarity, whether it is international conventions, national laws or institutional rules. Even the New York Convention, the very object of which is the recognition and enforcement of foreign arbitral awards, reflected in its very title, only tells as to when an award is a foreign award but is very much silent about the more fundamental issue as to what an award is. Since the New York Convention applies only to arbitral awards, it is indispensable to know what decisions can be considered awards? The present paper attempts to develop a conceptual understanding of award culled from judicial decisions in England, France and India.

3.1 Introduction

An award is the ultimate ‘destination’ of any arbitration, the ‘final step’, which terminates the mandate of the tribunal.¹ It is essential to identify it for the purpose of enforcement which is the very object of any arbitration.² Notwithstanding the immense importance of an award, our understanding of the term is merely tentative. Despite there being a huge network of laws³ dealing with it ranging from its making to

¹ Nigel Blackaby and others, *Redfern and Hunter on International Arbitration*, (6th edn, OUP 2015) para 9.01; Gary Born, *International Commercial Arbitration*, (3rd edn, Wolters Kluwer 2021) 3139.

² Philippe Fouchard, Emmanuel Gaillard and Berthold Goldman, *Fouchard, Gaillard and Goldman on International Arbitration* (Emmanuel Gaillard and John Savage eds, Kluwer Law International 1999) 737.

³ See, e.g., The Geneva Convention of 1927; The New York Convention on The Recognition and Enforcement of Foreign Arbitral Awards 1958; The European Convention 1961; The Paris Agreement 1962; The Moscow Convention 1972; Inter American Convention; Inter-Arab Convention; The OHADA Treaty 1993; The National Legislations and Various Institutional Rules constitute the network.

R. Kapoor (✉)
NALSAR University of Law Hyderabad, Hyderabad, India
e-mail: rajeshkapoor@nalsar.ac.in

the enforcement, a precise conceptual definition is something which is conspicuously absent, be it the international conventions, national legislations or institutional rules.⁴

Absence of a definition in international instruments can be attributed to the lack of consensus⁵ as 'the negotiators of the Convention had difficulties agreeing upon a common definition and eventually decided to leave the term undefined.'⁶ But the same cannot be a reason for the widespread absence in the domestic legislations too.⁷ Is it because the concept is too labyrinthine, rendering it well-nigh incapable of a juristic definition or is it a strategy to keep it flexible so as to allow recalibration of its contours to enable enforcement of as many decisions as possible, is not certain? Regardless of the reasons, the lack of a proper conceptual definition engenders a type of uncertainty which can undermine the efficacy of the system.

Undoubtedly, conceptual discussion as to what is an award is of immense practical importance. Sadly, 'international commercial arbitration literature has not been able, so far, to generate a comprehensive and satisfying analysis of the notion of arbitral award. With a few exceptions there are virtually no contributions on the topic.'⁸ Even the New York Convention, the very object of which is the recognition and

⁴ These Conventions do not define the term 'award'. Same is the situation with most of the national arbitration laws. For example, there is no definition of the term award in the French Law, the English Law, the FAA and the Swiss Law to name a few and the national laws which include a definition are also not very informative. For example, Section 2(1) (c) of the Indian Arbitration Act says, 'arbitral award' includes an interim award.' However, there are a very few exceptions like New Zealand and Croatia where the legislation provides a definition of the term. Most of the leading institutional rules are also silent on the issue, see Gary Born, *International Commercial Arbitration*, (3rd edn, Wolters Kluwer 2021) para 22.02 [B] 1.

⁵ Judith Gill, 'The Definition of Award under the New York Convention' (2008) 2 *Dispute Resolution International* 114; Ehle, 'Article I Scope of Application' in Reinmar Wolff (ed), *New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards—Commentary*, (CH Beck, 2012) 32, The UNCITRAL Model Law proposed the following definition which could not be adopted due to lack of consensus:

Award means a final award which disposes of all issues submitted to the arbitral tribunal and any other decision of the arbitral tribunal which finally determines any question of substance or the question of its competence or any other question of procedure but, in the latter case, only if the arbitral tribunal terms its decision an award.

H.Holtzman and J.Neuhas, *A Guide to the UNCITRAL Model Law on International Commercial Arbitration: Legislative History and Commentary*, (Wolters Kluwer, 1989) 154.

⁶ Bernd Ehle, 'Article I Scope of Application' in Reinmar Wolff (ed), *New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards—Commentary*, (CH Beck 2012) 32.

⁷ Domestic legislations providing a definition are a rare exception. See, Gary Born, *International Commercial Arbitration*, (3rd edn, Wolters Kluwer 2021) para 22.02 [B] 1.

⁸ Julian D M Lew and Giacomo Marichisio, *The Notion of an Award in International Arbitration: A comparative Analysis of French Law, English Law and the UNCITRAL Model Law*, (Kluwer Law International 2017) 1. See also Judith Gill, 'The Definition of Award under the New York Convention' (2008) 2 *Dispute Resolution International* 114; Domenico Di Pietro, 'What Constitutes an Arbitral Award Under The New York Convention' in Emmanuel Gaillard and Domenico Di Pietro (eds), *Enforcement of Arbitration Agreements and International Arbitral Awards—The New York Convention in Practice* (Cameron 2008) 139; Philipp Peters and Christian Koller, 'The Award and the Courts—The Notion of Arbitral Award: An Attempt to Overcome a Babylonian Confusion' in

69

CITIZENSHIP CONTEXT AND CHALLENGES

AMIR ULLAH KHAN and RIAZ F. SHAIKH

Foreword by FAIZAN MUSTAFA



Naresh Chandra Saxena | Ajit Joy | Jeemol Unni | Abhishek Preetham
K.M. Ziauddin | Subhankar Basu | Hilal Ahmed | Aymen Mohammed
Amitabh Kundu | P. C. Mohanan | Ritumbra Manuvie | Fatima Khan
Paranjay Guha Thakurta | Sourodipto Sanyal | Syed Ubaidur Rahman
Ankita Sharma | Hindol Sengupta | Abdul Shaban | Shafeeq R. Mahajir

CDPP

CENTRE FOR
DEVELOPMENT
POLICY AND
PRACTICE



"This is an important collection of essays on a very important subject. Citizenship is in the power of the State to grant, and that power confers upon it an enormous amount of discretion in a matter that can and does make and break people's lives.

These essays debate and discuss this power and the ways in which political discretion can be eliminated, giving way to considerations that are rooted in morality and compassion rather than technicalities and expediency. The fact is that until 1947, the people of what was India then, should be a source of strength, not societal weakness and cracks that it has now become. These essays serve to refocus our attention on what really matters and should matter in the citizenship angst that the world is experiencing now."

- T.C.A. SRINIVASA RAGHAVAN

Amir Ullah Khan and Riaz F. Shaikh, in the edited volume "Citizenship: Context and Challenges", bring together academics from various disciplines, activists, legal luminaries, and public intellectuals to deconstruct the concept of citizenship beyond the much-hyped political narrative. The essays provide diverse perspectives and insights on policies, rights and duties against the backdrop of new Citizenship Laws and their impact on different sections of society, especially vulnerable population groups and religious minorities. This is a must-read book.

- POONAM MUTTREJA, Executive Director of the Population Foundation of India

Citizenship is the most basic of all fundamental rights, yet very little of it exists in the public consciousness. We just took it for granted till the Citizenship Amendment Act gave us a big jolt. This beautiful collection of essays couldn't have been better timed. A must-read to understand the issues involved.

- S. Y. QURAISHI, Former Chief Election Commissioner of India

₹800 | \$20 | £10

ISBN: 978-81-953449-3-2



9 788195 344932

Cover Photographs by
AMIN NOZMUL ISLAM
(Winner of GreenHub Fellowship)

Cover Designed by SYED MOIN AFROZ



**CENTRE FOR DEVELOPMENT
POLICY AND PRACTICE**

Hyderabad, Telangana, India
info@cdpp.co.in | www.cdpp.co.in

(NON-) COOPERATIVE FEDERALISM AND FRATERNAL CITIZENSHIP IN INDIA

Aymen Mohammed

ABSTRACT

Citizenship, in its legal sense, offers civil-political rights that are available to citizens to the exclusion of all others. It follows that the question of citizenship is not a purely philosophical matter, since formal citizenship is often used as a proxy for identity and a shorthand for those eligible to exercise political rights, it can deny civil rights to millions of people-stateless, the denaturalized, the undocumented, the “guest worker” and the refugee. This paper tries to analyze the conceptual framework of “citizenship” critically. It also traces how political and constitutional arrangements have impacted India’s citizenship framework.

The most significant of these arrangements is India’s federal structure, mainly, how federalism has intersected with citizenship. The paper further argues that neither can federalism and citizenship be viewed separately nor should they be seen as isolated questions of institutional design or statecraft alone. Rather, they should be understood as constitutional arrangements that must necessarily be guided by constitutional principles, namely, fraternity. Finally, the paper draws from foreign jurisdictions to identify possible constitutional and administrative arrangements that open up more avenues for states and the union/federal government to cooperate on questions about citizenship, contending that there are alternative constitutional conventions that are not guided by political expediency alone.

Keywords: cooperative federalism, centre-state relations, fraternity, identity

INTRODUCTION

Citizenship is famously characterized as the “right to have rights” (Arendt, 1973). It denotes membership of a political community (Mindus, 2009) and the formal bundle of rights that members of a political community possess (Sassen, 2005). In the formal legal sense of the word, it may specifically refer to certain civil and political rights that are available to citizens to the exclusion of all others. (Mindus, 2009). In understanding citizenship conceptually, one may benefit from understanding not only the criteria of citizenship, but also those classes of persons that are excluded from such criteria and the nature of rights that are made unavailable to them.

Historically, the evolution of citizenship in this sense was closely connected to membership of an ethnic or linguistic group. While modern liberal democracies have embraced a more individualist notion of who a citizen is, this underlying presumption pertaining to identity is still reflected in debates relating to the “integration” of immigrant groups and the rights of ethnic or religious minorities (Hodson, 2020). These debates are visible in much of Europe as well as the United States. While birthright citizenship is now entrenched in the United States, much of the underlying content of immigration and citizenship debates continues to be driven by demographic anxieties and racial considerations (Bingham & Arnpriester, 2019).

In this regard, citizenship in post-colonial contexts has presented significant challenges (Lambert, 2015). These challenges are not only reflected in the formal legal systems of citizenship that these states enacted following decolonization but also in the realities of often governing multi-ethnic, multi-religious and diverse groups. Identity-based citizenship frameworks in many jurisdictions continue to be applied¹. Therefore, the consequent human cost cannot be denied.

Since formal citizenship is often used as a proxy for identity and a shorthand for those eligible to exercise political rights, it is important to challenge the self-evident manner in which it is treated. The “other” of a “citizen” is not “foreigner” alone, but different classes of excluded people: the stateless, the denaturalized, the undocumented, the “guest worker” and the refugee.

1 For instance, the 1982 Citizenship Law of Myanmar is directly contingent on the descent or membership of ethnic identity. See, “Arbitrary Deprivation of Citizenship”, Amnesty International, October 31 2016. Available at: [https://www.amnesty.org/download/Documents/POL4073492017 ENGLISH.pdf](https://www.amnesty.org/download/Documents/POL4073492017%20ENGLISH.pdf). See further, “Nationality and Statelessness”, Human Rights Watch, Available at: hrw.org/legacy/campaigns/race/nationality.htm#:~:text=Millions%20of%20people%20in%20Asia,women%20can%20not%20transmit%20nationality.

Besides an arbitrary (and usually discriminatory) criteria set for citizenship by the modern nation-state, there is very little to justify the exclusion of these classes from the political community. In politics (Nyers, 2011) as well as scholarship (Brandzel, 2016), one has an opportunity to analyze the conceptual category of “citizenship” critically.

These questions are not philosophical in nature alone; they impact millions of individuals who have been expelled from their homes or have lived in a perpetual state of rightlessness, sometimes for most of their lives. Therefore, the justification for citizenship – and the power of the state to arbitrarily determine its criteria – should not be treated as obvious.

This is even more important in the Indian context, where religious and ethnic identity has often been used as a proxy to strip individuals of their rights. For example, ethnic Bengali Muslims in India have repeatedly faced disenfranchisement² and displacement³ without even the actual deprivation of formal citizenship.

Therefore, there is a case to be made that citizenship should be separated from the mere formal conception of “legal status” to meaningfully include all such individuals who have a stake in the polity. In more concrete terms, this may mean that laws that may impact a particular class of people should not be made without their full participation.

In India, the shadow of partition of the subcontinent loomed large over the nature of citizenship laws that were enacted and enforced (Roy, 2010). Despite the new republic's conscious attempt to embrace birthright citizenship, India increasingly moved further towards descent-based citizenship.

2 The political demonisation of ethnic Bengali identity in “mainland India” has been documented in “Bangladeshi Migrants in India: Foreigners, Refugees, or Infiltrators?” Rizwana Shamsad, OUP (2017). Also see *Lal Babu Hussein vs Electoral Registration Officer* 1995 SCC (3) 100 and which records instances where the Election Commission and law enforcement machinery carried out targeted sweeps to identify undocumented “foreigners”. In Assam, the Election Commission of India carried out mass disenfranchisement through a process known as identifying of ‘D Voters’. Rafiul Ahmed, “Assam’s ‘D-voters’”, *Himal Magazine*, May 26 2014. Available at: <http://himalmag.com/assams-d-voters>.

3 See, Ramachandran, S. (2003). “Operation Pushback”: Sangh Parivar, State, Slums, and Surreptitious Bangladeshis in New Delhi. *Economic and Political Weekly*, 38(7), 637–647. “Even Before NRC, Mumbai’s Bengali-Speaking Muslims Spent Years Trying to Prove Citizenship”, Sukanya Shantha, *The Wire*, September 26 2019. Available at: <https://thewire.in/rights/mumbai-bengali-speaking-muslims-citizenship-detention>. “The harassment of Bengaluru’s Bengali-speaking workers in the name of ‘security’”, Soumya Chatterjee, November 20 2019, *The News Minute*. Available at: <https://www.thenewsminute.com/article/harassment-bengalurus-bengali-speaking-workers-name-security-112629>

While formal provisions of the law did not expressly create discriminatory criteria for Indian citizenship, the manner in which they were implemented was often based on religion and ethnicity (Pisharoty, 2019).

For a significant portion of Indian history, formal citizenship was presumed on the basis of residence and documentary citizenship was accessible for even those who may have been formally excluded from the citizenship criteria. However, this regime of “presumed citizenship” has seen significant departures, either at the formal legal level or in practice.

Therefore, it is important to trace the manner in which political and constitutional arrangements have impacted this contradictory citizenship framework. The most significant of these arrangements is India’s federal structure. In this chapter, I have traced some of the ways in which Indian federalism has intersected with citizenship. By analyzing federalism and citizenship in conjunction, one may be able to evolve frameworks that produce outcomes that are consistent with the principles embraced in the Constitution. It is my argument that federalism and citizenship cannot be viewed separately, nor should they be seen as isolated questions of institutional design or statecraft alone. Rather, they should be understood as constitutional arrangements that must necessarily be guided by constitutional principles.

I argue that citizenship and federalism must be guided by the underlying constitutional value of fraternity. Whether it is the constitutional power to legislate or administer questions of citizenship, and whether it is at the level of the state or union, it must necessarily be guided by fraternity. Fraternity in the preamble of the Constitution of India refers to two prongs: the dignity of the individual and the unity and integrity of India.

Therefore, where the exercise of legislative or administrative powers produces unfraternal outcomes, they should be considered unconstitutional. In other words, where such outcomes violate individual dignity, or harm the unity and integrity of India, they would be inconsistent with the constitution.

A conventional understanding of federal constitutions is that the union is empowered to legislate and administer on matters concerning foreign relations, immigration and citizenship (Schuck P. H., 2000). The constitutional position in India is not particularly different. For example, Article 11 of the Constitution of India empowers “Parliament to make any provision with respect to the acquisition and all other matters relating to citizenship”.

The Immigrants (Expulsion from Assam) Act, 1950 was one of the first laws enacted pursuant to this Article⁴.

Since then, Parliament has enacted new legislation and amended the Citizenship Act, 1955 significantly. Besides legislative enactments, judgements of the Supreme Court have contributed heavily to the development of India's citizenship framework. Therefore, a significant portion of legal scholarship is focused on these union-level legislations and judicial pronouncements. However, it may be argued that another site of constitutional interpretation is the states.

India's citizenship framework is designed in such a manner that, the union has the exclusive power to legislate and administer matters concerning citizenship. However, it is the States that play a critical role in how general provisions of this citizenship framework are applied to specific individuals in specific circumstances. Therefore, in the first section of this chapter, I will briefly outline the conceptual framework I have utilized in this chapter. The section outlines connections between federalism and citizenship, and why it is essential that constitutional powers are exercised in a manner that is guided by the constitutional principle of fraternity. The second section of this chapter explains the "routine" constitutional and administrative relationship underpinning the union-state relationship on citizenship.

Through this "routine" relationship, we understand that focusing on union-state "cooperation" may distract us from the more important question how federalism has impacted India's citizenship regime and also how India's citizenship regime has influenced policymaking at the state level. In contrast, the center-state confrontation over the implementation of the National Population Register may point to a need to focus on the substantive nature of citizenship and the underpinning constitutional value guiding the operation of federalism. Citizenship laws in India cannot be analyzed in isolation from the federal framework. In turn, studying federalism solely through the prism of union-state cooperation will not provide us with a comprehensive account of either citizenship or fraternity.

In the fourth and last section of the chapter, I draw from foreign jurisdictions to identify possible constitutional and administrative arrangements that open up more avenues for states to exercise their discretion on questions about citizenship. As mentioned before, such debates on citizenship are not unique to India alone.

4 The law was enacted on March 1 1950, a little over a month after the coming into force of the Constitution.

These debates have produced confrontations and cooperation between the provincial units and the federal governments. These instances of cooperation and confrontation are also not isolated but guided by underlying values that are purportedly cherished by their adherents. I have tried to draw on these parallels to demonstrate that there are alternative constitutional conventions that are not guided by political expediency alone.

I. CONCEPTUAL FRAMEWORK

The liberal notion of citizenship enjoins individual rights in contrast to rights by virtue of membership in a group (Ahmad, 2014). In this context, citizenship is understood as formal membership of a polity, allowing the member certain rights and privileges (Ahmad, 2014). These rights and privileges may vary, depending on the context, but primarily relate to political rights: the right to form associations, the right to assemble, the right to vote and contest in elections.

How citizenship is empirically experienced and how one participates in the political affairs of a country is subject to vast scholarship, both in India (Roy, 2010) as well as internationally (Turner, 2002). The scholarship has also focused on the need to develop newer and more inclusive ways of conceptualizing citizenship (Hinton, 2010).

For the purposes of this analysis, I have focused on analyzing citizenship as the formal legal relationship between the state and the individual. (Gaventa, 2002). In this sense, citizenship is often understood to include as well as exclude people. Those excluded can be legally deprived of civil and political liberties that may be available to citizens.

For example, the Constitution of India recognizes the right to equality for citizens as well as non-citizens. However, the right against non-discrimination on the basis of religion, caste or sex is only available for citizens. Furthermore, the right to speech and expression and the right to participate in electoral democracy – essential political rights that expressly denote political membership – are also restricted to formal citizens alone⁵.

Any recognition or non-recognition of formal citizenship impacts millions of people across India. Therefore, it is important to account for how citizenship laws are designed and implemented and the role that the federal principle plays in this regard.

India enacted various specific and general legislation to regulate the entry of foreigners into India⁶, the manner of acquiring citizenship and the circumstances in which a person

⁵ Articles 15, Article 19(1)(a) of the Constitution of India.

⁶ Passport (Entry into India) Act, 1920 and Passport (Entry into India) Act, 1950

may lose their citizenship⁷. How is this vast statutory framework implemented? What kind of federal politics drove changes to the Indian citizenship regime? How do state-specific citizenship regimes fit in with the broader principle of equal citizenship? What kind of constitutional principles can guide our understanding of federalism and citizenship in India?

Answers to these questions will draw direct links between federalism and citizenship. In describing federalism, a key feature is dual citizenship (Baogang He, 2009). Dual citizenship allows provincial citizens certain rights or privileges within the territory of the state, while non-citizens of such states may be excluded from such privileges. Citizenship and federalism also intersect in national contexts where group recognition, individual rights, and nation-building have been mediated using federal institutional arrangements (Beken, 2019). For instance, in India, the drawing of provincial territories to overlap with ethnic or linguistic identities within a multi-ethnic, multicultural federal democracy was an attempt to promote self-rule. However, as Baruah points out (Baruah P., 2011), special constitutional arrangements meant to “integrate” and politically empower tribal groups not only failed but often produced unequal outcomes that deprived other groups of their citizenship rights.

In understanding the intersections of federalism and citizenship, one may have to move beyond framing the question in terms of “state compliance” or “cooperative federalism” (Rodriguez, 2017). Instead of focusing on whether states cooperate with union-made citizenship laws, it may be helpful to pay attention to the nature of cooperation or lack thereof.

In this chapter, I use three examples to illustrate at least three interconnected facets of this relationship between federalism and citizenship. Firstly, the distinct role of the ethnonationalist movement in Assam in influencing the union to amend the Indian citizenship regime.

This example not only shows that “cooperative federalism” can also include instances where the union cooperated with state-specific demands to alter the citizenship regime substantially. As Jayal shows (Jayal, 2016), India’s founders had preferred an inclusive form of citizenship that embraced a non-racial basis of citizenship.

However, over time, Indian citizenship departed far from this conscious decision. Perhaps the first departure from this principle was the promulgation of the Undesirable

7 Citizenship Act, 1955

Undesirable Immigrants (Expulsion from Assam) Ordinance, 1950, which was later enacted as a statute by parliament. However, a more express departure from this principle was the amendment to the Citizenship Act, 1955 in 1984, following the Assam Accord.

The enactment of Citizenship Amendment Act, 2019 (C.A.A.) has been criticized because it provides for a separate regime of citizenship based on religion. Even during the aftermath of the partition, the nascent republic resolved questions of citizenship without any reference to religion (Jayal, 2016). No Indian law pertaining to citizenship ever provided for a religious basis for the acquisition of Indian citizenship. This is perhaps, a second significant departure from the original conception of inclusive, religion-neutral Indian citizenship.

However, not enough attention is paid to Section 3 of C.A.A. The 2019 Act now exempts “protected” tribal areas of Assam, Meghalaya, Mizoram, or Tripura and the areas covered by the “Inner Line” notified under the Bengal Eastern Frontier Regulation, 1873. Through this example, one not only sees the third departure from the original principle – but also another facet of the relationship between federalism and citizenship, where states are not merely passive administrators of citizenship laws, but active participants in determining the content and scope of statutes.

Why should such “exemptions” be treated with skepticism? Primarily because citizenship, especially in a post-colonial, multicultural context such as India, is rather general in nature. Since it was formally unconnected to race or ethnicity, it was also kept neutral in terms of residence or domicile. In this regard, one can point to how the question of federalism was intertwined with citizenship for Dr. Ambedkar.

In the Constituent Assembly, Dr. Ambedkar argued,

“[T]he points of difference between the American Federation and the Indian Federation are mainly two. In the U.S.A., this dual polity is followed by dual citizenship. In the U.S.A., there is citizenship of the U.S.A. but there is also citizenship of the state. No doubt, the rigors of this double citizenship are much assuaged by the fourteenth amendment to the Constitution of the United States, which prohibits the states from taking away the rights, privileges, and immunities of the citizen of the United States.”

[...]

In short, there are a number of rights that a state can grant to its own citizens or residents that it may and do legally deny to non-residents or grant to non-residents only on more difficult terms than those imposed on residents. These advantages, given to the citizen in his own state, constitute the special rights of state citizenship. Taken all together, they amount to a considerable difference in rights between citizens and non-citizens of the state. The transient and the temporary sojourner is everywhere under some special handicaps.”

Dr. Ambedkar’s eloquent preference for single citizenship (as opposed to American dual citizenship) boiled down to the idea that an Indian citizen, regardless of where she resides, should have the same rights and privileges. That rights and privileges of citizens should not be contingent on domicile. In creating an Assam-specific citizenship framework and then creating a special regime for parts of specific states, the departure from single, unitary citizenship has been more or less complete. These are instances where the union and specific states cooperated on the question of citizenship – but the nature of this cooperation was in opposition to the broader constitutional principles.

We must also analyze the response of state governments and legislatures to the issue of implementation of the National Population Register. The constitutionality of the rules governing the National Population Register and National Register of Indian Citizens is questionable. However, it points to an instance where states withheld cooperation on the question of citizenship. This is yet another facet of the citizenship- federalism relationship that must not be ignored. These examples demonstrate that it is not particularly helpful to understand federalism and citizenship solely through the question of “cooperation”. As states continue to play a significant role in how citizenship laws are designed and enforced in India, it may be better to investigate the constitutional principles they are guided by.

Such an approach can help in developing constitutional conventions that resolve federal conflicts without departing from the principle of single, inclusive and equal citizenship. If such constitutional conventions are ad-hoc, they are likely to continue to further depart from the original principles of equal and inclusive citizenship.

What constitutional principles can guide the question of federalism and citizenship? It is my suggestion that Dr. Ambedkar’s conception of fraternity can help in devising a formal citizenship regime that is true to the vision of the framers of the constitution. The Constitution of India recognizes fraternity in reference to the “dignity of the individual⁸”.

8 Preamble to the Constitution of India

Furthermore, fraternity was a conscious inclusion in the preamble of the Constitution. In a letter dated February 21, 1948, Dr. Ambedkar wrote to Rajendra Prasad, president of the constituent Assembly:

The [Drafting] committee has added a clause about fraternity in the preamble although it does not occur in the Objectives Resolution. *"The Committee felt that the need for fraternal concord and goodwill in India was never greater than now and that this particular aim of the new Constitution should be emphasized by special mention in the Preamble."* (emphasis supplied)

In his oft-cited speech of 25 November 1949⁹, Dr. Ambedkar spent a significant amount of time addressing the question of fraternity. In his understanding, fraternity cannot be separated from liberty and equality, they are not separate, but a "union of trinity in the sense that to divorce one from the other is to defeat the very purpose of democracy".

Dr. Ambedkar situated fraternity as a value that operates horizontally. As something that individuals must feel towards one another. It is the "disposition" to treat other human beings as objects of "reverence and love" and with a desire to be "in unity with [...] fellow beings". It is in social relations that people ought to feel "fraternal concord" towards each other, without this goodwill, how would one guarantee liberty or equality? In the absence of fraternity, "liberty would destroy equality and equality would destroy liberty" (Ambedkar, 2014). In other words, fraternity plays the "mediating" role between liberty and equality (Narain, 2017).

Dr. Ambedkar also spoke of fraternity in terms of a "common brotherhood of all Indians – of Indians being one people". This principle of fraternity "gives unity and solidarity to social life". From here, Dr. Ambedkar then developed the link between nationhood and fraternity,

"I am of the opinion that in believing that we are a nation, we are cherishing a great delusion. How can people divided into several thousands of castes be a nation? The sooner we realize that we are not as yet a nation in the social and psychological sense of the world, the better for us. For then only we shall realize the necessity of becoming a nation and seriously think of ways and means of realizing the goal. The realization of this goal is going to be very difficult – far more difficult than it has been in the United States. The United States has no caste problem. In India there are castes. The castes are anti-national. In the first place because they bring about separation in social life. They are anti-national also because they generate jealousy

9 Constituent Assembly Debates, November 26, 1949.

and antipathy between caste and caste. But we must overcome all these difficulties if we wish to become a nation in reality. *For fraternity can be a fact only when there is a nation. Without fraternity, equality and liberty will be no deeper than coats of paint.*" (emphasis supplied)

It was this approach to fraternity – as mutual respect and as a national concord – that perhaps guided Dr. Ambedkar's spirited defense of a "unitary citizenship in a dual polity".

Constitutional recognition of difference must not negate the basis of citizenship. In order to prevent such a negation, it is essential that dual polities do not result in the dual basis of citizenship rights. In the case of the C.A.A., one sees the very basis of accessing rights – formal citizenship – is contingent on faith and domicile. Legislations that endorse separation as a way of life or produce "jealousy and antipathy" between individuals are unfraternal and a barrier to "fraternal concord". In other words, statutes that expressly encode a "separation in social life" contradict India's constitutional objective of unity and integrity.

An Ambedkarite understanding of fraternity is essential beyond just formal citizenship. This understanding of fraternity does not limit "fellow-feeling" to a specific group alone – definitely not one that is carved out on the basis of an arbitrary legal criteria. Instead, it requires that humans strive to treat all humans with reverence. Therefore, while nationhood may require "fraternal concord", democracy requires an attitude of respect towards all human beings. For those who seek to advance their constitutional claims, the question must be: does this claim create separation in social life? Do these claims respect human dignity or denigrate it?

Similarly, before we subject statutes to constitutional tests pertaining to fundamental freedoms or even equality, it may be helpful to ask: does this law restrict benefits to a few at the cost of others? Does this law deny to others what is made available to a select few? Citing J.S. Mill, Dr. Ambedkar explains:

"The good of others becomes to him a thing naturally and necessarily to be attended to like any of the physical conditions of our existence. *Where people do not feel that entireness of sympathy with all others, concordance in the general direction of their conduct is impossible*". (Ambedkar B., 2014). (emphasis supplied)

In the landmark judgement in *S.R. Bommai v. Union of India*¹⁰, the Supreme Court held that the principle of secularism was an essential facet of the basic structure of the constitution. Among the many tools that the Supreme Court used at its disposal, the application of fraternity was important,

“India being a plural society with multi-religious faiths, diverse creeds, castes and cultures, secularism is the bastion to build fraternity and amity with dignity of person as its Constitutional policy. It allows diverse faiths to flourish and make it a norm for tolerance and mutual respect between various sections of the people and to integrate them with dignity and fulfilment of cravings for self-realization of religious belief with larger national loyalty and progress.”

In sourcing secularism and pluralism as part of a “constitutional policy”, the Supreme Court opened up the possibility of using fraternity as a tool to interpret the whole scheme of the constitution and not just specific provisions. The court placed emphasis on the underlying premises and structures of the constitution that recognize fraternity, especially the dignity of the individual. Furthermore, while reading fraternity and dignity together, the Supreme Court recognized that mutual respect and reciprocity were the basis on which a national identity could be built.

In this regard, the Bommai judgment is also instructive for another purpose. The union government had justified its dismissal of certain state governments on grounds that it was essential to protect secularism. The judgment held that secularism was a valid ground on which such a constitutional power could be exercised. One could argue that facets of fraternity are directly connected to India’s asymmetric federal structure (Arora, 2007). Therefore, when states and the union do exercise their constitutional powers in relation to each other, especially when such power pertains to citizenship, it may be necessary to analyze to what extent exercise of such powers is guided by fraternity. In this section, I have attempted to situate these departures from the original conception of citizenship in light of Dr. Ambedkar’s dual understanding of fraternity as “reverence towards fellow man” and also as a sense of nationhood.

It is perhaps these values that guided the understanding of a citizenship framework that was neutral to identity as well as to domicile. In the next section, I discuss the ways in which citizenship laws – purportedly enacted by the union – were actually the product of a unique union-state relationship. It is important to note that no account of Indian citizenship laws is complete without understanding the role played by Assam’s ethno-nationalist movement.

10 *S.R. Bommai v. Union of India* 1994 AIR 1918.

II. UNION-STATE RELATIONS ON CITIZENSHIP

The constituent assembly provided for an inclusive framework for Indian citizenship. Under Article 5 of the Constitution of India, citizenship could be acquired by any person who was born in India. Furthermore, it could be acquired if at least one parent of a person was born in India or if a person was “ordinarily resident” of India for five years preceding the commencement of the constitution. Articles 6 and 7, dealt explicitly with the situation of migrants to and from the then newly formed Pakistan. However, under Article 11, parliament was empowered to make laws regardless of the scheme provided under Article 5. In other words, nothing in Article 5 prevents parliament from making laws “with respect to the acquisition and termination of citizenship and all other matters relating to citizenship”.

It is this *carté blanche* that has been used repeatedly to enact laws that depart from the original concept of birthright citizenship. The constitution had nominally embraced single (and equal) citizenship within federal setup. However, parliament enacted The Immigrants (Expulsion from Assam) Act, 1950 (“Immigrants Act, 1950”) within a month of the constitution’s prorogation.

The Immigrants Act, 1950 was initially promulgated as the “Undesirable Immigrants (Expulsion from Assam) Ordinance, 1950” on 5 January 1950. The word “undesirable” was dropped when the ordinance was subsequently enacted by parliament, but this did not change the content or intentions of the law. The Act provided vast powers to officers in Assam to “expel” people while permitting the residence of certain refugees. Although not expressly mentioned, the “undesirable immigrants” were Muslims while the “protected refugee” were Hindus (Pisharoty, 2019).

In 1951, a National Register of Citizens’ exercise was also carried out solely for Assam. Therefore, it was clear that even while the founders were attempting to strive for single citizenship, Assam’s “anti-foreigner” anxieties were driving the need for region-specific citizenship laws and frameworks. Furthermore, while the founders embraced a religion-neutral citizenship framework, there was little hesitation in enforcing religion-specific laws on the ground.

Under Article 246 and Schedule VII to the Constitution of India, “citizenship, naturalization, and aliens” is a legislative and administrative subject that falls squarely within the union’s competence.

However, the union has delegated many of these duties and powers to state governments under Article 258(1), which permits the union to delegate powers

conditionally or unconditionally to state governments. Enforcement of provisions concerning the entry of foreigners¹¹, naturalization¹², and the detection and deportation of foreigners¹³ depends heavily on states as such powers have been delegated to them.

The Assamese nationalist movement was driven heavily by the identification of Bengali Muslims as the racial “other” and relied on demographic panic stoked by using questionable data analysis (Murshid, 2016). This movement gained strength following Bangladesh’s war in 1971. The Assam Accord of 1985 between the union government and leaders of the Assam movement not only provided these claims with official recognition but they were also legislated wholesale into parliamentary statute.

The 1985 Amendment to the Citizenship Act substantially altered who could access Indian citizenship in Assam. It created a graded scheme wherein one’s citizenship would be determined depending on the date on which they entered Assam (whether prior to January 1966 or prior to Bangladesh’s war in 1971). In contrast to every modern conception of citizenship, a certain class of persons would have all other citizenship rights except exercising suffrage, which would be deprived to them for a period of ten years¹⁴.

It is in the above ways that Assamese nationalist chauvinism had come to create a somewhat distinct citizenship regime for Assam. Furthermore, it had managed to create a temporary class of disenfranchised citizens. In this Assam-specific citizenship regime, the role of the Supreme Court of India also deserves attention.

In 2005, the Supreme Court, in *Sarbananda Sonowal*¹⁵ struck down the Assam-specific Illegal Migrants (Determination by Tribunal), 1983 (“I.M.D.T. Act”) as unconstitutional. The I.M.D.T. Act had provided for a framework wherein the burden of proof to determine whether a person was an illegal migrant would fall on the state and not on the alleged illegal migrant. The observations of the Supreme Court seemed to have little basis in fact;

11 “Powers delegated to State Governments/ UT Administrations/FRROs/ FROs for various visa related services”, Ministry of Home Affairs, September 16 2016

12 “Officials in 7 States Can Now Grant Citizenship to Minority Migrants,” Indian Express, (2016)

13 “Identification of illegal migrants and monitoring thereof - regarding” Letter No. 24013/29/Misc./ 2017-CSR.III(i), Ministry of Home Affairs, Government of India. August 8, 2017.

14 Section 6A, Citizenship Act, 1955

15 *Sarbananda Sonowal vs Union of India*, Supreme Court of India, July 12, 2005

“The long-cherished design of Greater East Pakistan/Bangladesh, making in-roads into strategic land link of Assam with the rest of the country, can lead to severing the entire land mass of the north-east with all its rich resources from the rest of the country. They will have disastrous strategic and economic consequences¹⁶”.

The basis of finding the I.M.D.T. Act unconstitutional is concerning. Article 355 enjoins a duty on the union to protect states against “external aggression and internal disturbance”. According to the Supreme Court, this “external aggression and internal disturbance” can be connected to the abovementioned designs of a “Greater East Pakistan/Bangladesh” as well as the alleged “demographic changes” in India’s north-east.

Therefore, in the Supreme Court’s view, an Assam-specific legislation would not violate the fundamental right to equality per se. What made the IMDT Act unconstitutional was the fact that it provided for a weaker regime for detecting and deporting foreigners than the one in force in other parts of India. According to the Foreigners Act, 1946 and the Foreigners (Tribunal) Order 1964, the burden of proof of citizenship is on the person alleged to be a foreigner. Following the striking down of I.M.D.T. Act, proceedings against alleged foreigners were transferred to Tribunals constituted under the 1946 Act and the 1964 Order.

These Foreigners Tribunals are also under the oversight of the state government of Assam. The Assam government has constituted these tribunals in a manner that lacks propriety. The Tribunals have operated with scant respect for rule of law (Amnesty International, 2019). Persons appointed to the Tribunals as presiding officers and members have little training and are incentivized to declare people before them as foreigners. The human impact of these Tribunals has been massive. (Amnesty International, 2019). This “delegation” of citizenship-related powers has empowered the state to arbitrarily produce large-scale statelessness (Azad, Mander, & Bhat, 2020).

The Supreme Court of India also inaugurated the parallel process of a National Register of Citizens in Assam¹⁷ that has effectively created an excessive burden on the residents of Assam to demonstrate their citizenship on the basis of lineage and documentation (Justice Madan Lokur, 2019). The outcome of the N.R.C. has spawned a humanitarian crisis yet also managed to contradict the claim that Assam was “swamped by migrants”. In fact, the process only managed to exclude 19 lakh individuals, a relatively small

¹⁶ Paragraph 11, Ibid.

¹⁷ Assam Sanmilita Mahasangha v. Union of India, (2015) 3 SCC 1

number. Reportedly, a majority of those excluded are not Muslims¹⁸ (thereby discarding the claim of “millions of Bangladeshi intruders”¹⁹). As a result, the Bharatiya Janata Party-led government in Assam has rejected the N.R.C. as it does not exclude a sufficient number of Muslims and has demanded ‘reverification’ and the removal of “ineligible” persons²⁰. In other words, the government of Assam has shown a willingness to continue using this judicially monitored project for as long as it is necessary to assuage ethno-nationalist anxieties. Those excluded from the N.R.C. are not presumed to be “foreigners” liable to be deported since, legally, the N.R.C. and the Foreigners Tribunals processes are separate (but connected). Instead, they must await another parallel process before the Tribunals to be declared as foreigners.

“Declared foreigners” has itself become a separate category in Assam. These are individuals in whose cases the government has failed to prove to their purported home country (Bangladesh) that they are, in fact, its citizens. Therefore, they cannot be deported. In effect, these individuals are effectively stateless. According to government data, 1,29,009 persons have been declared as foreigners by the Foreigners Tribunals in Assam as of October 2019 and 4,68,905 cases were referred to Foreigners Tribunals during the same period. Out of these 1,29,009 individuals, only six were deported to their home country. Only four of these six individuals were from Bangladesh²¹.

Many, including Sanjib Baruah, have attempted to frame ethnic Assamese nationalism (Baruah S., 1999) as a benign “sub-nationalism” that is merely a subset of broader “Indian nationalism” subject to certain accommodations within the national constitution. However, when one assesses the citizenship experience in Assam, these “accommodations” have actually sought a fundamentally exclusionary citizenship regime that has resulted in targeted disenfranchisement and statelessness. These “accommodations” are not focused on the protection of language or culture alone but

18 “Exclusion of Hindu Bengalis from Assam NRC changing political”, Press Trust of India, September 22, 2019, Kolkata. Available at: https://www.business-standard.com/article/pti-stories/exclusion-of-hindu-bengalis-from-assam-nrc-changing-political-119092200259_1.html

19 A section of the people in the state had panicked following the publication of the updated final NRC in BJP-ruled Assam on August 31 last year, which had left out 19.6 lakh people, of whom around 12 lakh are reportedly Hindus. Bengal to hand over freehold land deeds to residents of 119 refugee colonies, Press Trust of India, September 1 2020, Kolkata. Available at: <http://outlookindia.com/newsscroll/bengal-to-hand-over-freehold-land-deeds-to-residents-of-119-refugee-colonies/1927135>

20 Explained: Move to delete ‘ineligible’ names from Assam NRC – who, and why, Abhishek Saha, Guwahati, October 19, 2020

21 “Declaration by Foreigners Tribunal” Ministry of Home Affairs, Answer to Unstarred Question 3558 (Asaduddin Owaisi), Lok Sabha, December 10 2019

on exempting a territory completely from equal citizenship. They have also permitted a state government to persecute and disenfranchise people belonging to specific ethnicities (namely, Bengali.) From a federal perspective, this can be simplistically framed as one region's claim for autonomy or a culture's protection from national majoritarianism. In fact, as demonstrated above, these sub-national claims have been endorsed and validated by a powerful union government and even the judiciary. These 'subnational' claims have also engendered the exception under Section 3 of the CAA that exempts the Act's application in the tribal areas of Assam, Meghalaya, Mizoram and Tripura, as well as the areas covered by the 'Inner Line' notified under the Bengal Eastern Frontier Regulation, 1873.

It is difficult to justify such federalism as accommodative if it produces an unfraternal conception of citizenship. The fact that the language and claims of the Assamese "anti-foreigner" movement were encoded into national citizenship law with the enactment of the 2003 Amendment to the Citizenship Act, 1955 demonstrates that it was not about defending a linguistic or ethnic identity that was under threat. Instead, it was about "detecting, disenfranchising and deporting" an evidently marginalized group of people. The 2003 Amendment discarded the inclusive notion of citizenship based on birth as well as descent and replaced it with a citizenship that depended solely on descent. It also imported the category of an "illegal migrant" from Assam-specific discourse. This category was not originally present in the Citizenship Act, 1955. Until then, the category of "illegal migrant" exclusively applied in Assam but now extended to the rest of India.

The statutory category of an "illegal migrant" is distinct from the category of a "foreigner", which requires someone to be declared as one after due process. The 2003 Act defines an "illegal migrant" as a "foreigner who entered India [...]" without valid travel documents or stayed in India beyond the permissible time. Following the 2003 Act, if a person was born after 2003, they can only be an Indian citizen if both their parents are Indian citizens or if one of their parents is an Indian citizen while the other is not an illegal migrant²². The 2003 Act also gave an impetus to documentary citizenship (since descent was now a material factor) and permitted the notification of a regime not only involving the issue of national identification cards but also the maintenance of an elaborate National Register of Indian Citizens²³.

22 Citizenship (Amendment) Act, 2003

23 Section 14A, Citizenship Act, 1955

As Anupama Roy remarks, it was the Assam Accord that gave impetus to two strands of the contemporary citizenship framework:

Despite their seemingly disparate and adversarial political imperatives, the C.A.B. and the N.R.C. have become conjoined in their articulation of citizenship. Indeed, the two represent the tendency towards *jus sanguinis* in the citizenship law in India, which commenced in 1986, became definitive in 2003, and has reached its culmination in the contemporary moment.

In 2003, the insertion of “illegal migrants” as a category in the provision of citizenship by birth became the hinge from which the N.R.C. and the CAB later emerged [...]. The second strand emerging from the 2003 amendment has taken the form of the C.A.B. which exempts “minority communities” (Hindus, Sikhs, Buddhists, Jains, and Christians) from three countries – Bangladesh, Pakistan, and Afghanistan – from “illegal migrants”. The C.A.B. brings the citizenship law in line with exemptions already made in the Passport Act 1920 and Foreigners Act 1946 through executive orders passed in September 2015 and July 2016. It sets a cut-off date of 31 December 2014 as the date of eligibility of illegal migrants for exemption.

We see that creating state-specific citizenship exceptions – presumably on grounds of accommodative federalism – has also resulted in a radically different citizenship regime that is distinct from the original conception of inclusive, equal, and single citizenship. Therefore, C.A.A., becomes a logical continuation of a citizenship regime that permits “exceptions” on the basis of descent (in reality, ethnicity). Such exceptions could be extended to a regime explicitly based on religion and purported “sending country”. Similarly, a regime that mandated documentary enrolment of citizens in a “register” for one state, could then be simply expanded across the nation.

These examples point to the need for an interpretation of federalism that is not merely understood in terms of any unguided exercise of constitutional powers by the union and states. When constitutional power is not guided by broader constitutional principles, the result is an erosion of rule of law and due process.

When the union cooperates with states to exercise its constitutional powers unaccompanied and unguided by any constitutional principle – it can result in a situation where citizenship itself is weaponized to assuage misplaced demographic anxieties.

II. WITHHOLDING COOPERATION ON THE NATIONAL POPULATION REGISTER

The 2003 Amendment Act empowered the Government of India to create a specific procedure by which citizens could be identified, enumerated and issued identity documents. It was purportedly under this law that the Citizenship (Registration of Citizens and issue of National Identity Cards) Rules of 2003 were notified.

The connection between the 2003 Rules and the C.A.A. 2019 requires some political context. Representatives on behalf of the Government of India and the Government of Assam had repeatedly linked the C.A.A. with N.R.C. (both nationally and specifically in Assam)²⁴. The C.A.A. was seen as a means to ensure that non-Muslims from Pakistan, Afghanistan, and Bangladesh declared as “illegal immigrants” under the N.R.C. process would have an accelerated path to citizenship while Muslims excluded from the N.R.C. would have to live with statelessness.²⁵ Statements of policy from the Union Ministry of Home Affairs had repeatedly characterized the NPR as the “first step” towards the N.R.I.C²⁶.

The result was not only a growing demand within civil society to withdraw the N.P.R., but an “unprecedented” situation began to unfold when the state government of West Bengal “stayed” all activities connected with N.P.R. in the state. It is important to note that the state government used an administrative order and not a formal statutory instrument. Furthermore, as brief as the order is and as political as the act of staying the N.P.R. may be, the government of West Bengal was conscious of its legal nature. The operational part of the order, sent to all district magistrates and commissioners of Kolkata and Howrah Municipal Corporations was as follows,

“No activity regarding N.P.R may be taken up without prior clearance from the government of West Bengal [...] The order is issued in the interest of public order”²⁷.

In choosing to stay the N.P.R., the government of West Bengal was perhaps exploring uncharted territory. However, it took this decision squarely within the powers available to it by virtue of the constitution. Under Schedule VII to the Constitution of India, “public order” is an exclusive domain of states.

24 Not Happy with NRC List, Many People Manipulated Data: Himanta Biswa Sarma, India Today (on Youtube). Available at: <https://www.youtube.com/watch?v=of1v32ITfKs&feature=youtu.be>

25 “Assam NRC: ‘We must find a way to exclude more names in border districts,’ says minister”, Scroll.in, October 12, 2018.

26 Ministry of Home Affairs, Annual Report (2018-19)

27 “West Bengal stops National Population Register work, civil rights activists welcome move”, The Hindu, Kolkata, December 16, 2019

The union cannot encroach on this domain. Furthermore, the state government would be in a position to justify that the “stay” (instead of an outright refusal) was placed because of anxieties pertaining to C.A.A.-N.P.R. in the state and conducting the N.P.R. in such a situation would put public order at risk. West Bengal was followed by the state government of Kerala²⁸ in staying the N.P.R. by an order of the state’s Principal Secretary. What was implied in the West Bengal memorandum was made explicit in the Kerala order. The operational part of the Order reads,

“Considering that the apprehensions among the general public about the conduct of National Population Register related activities leads to National Register of Citizens (N.R.C.) in the wake of Citizenship Amendment Act, 2019, the state government orders to stay all the activities connected with the updation of National Population Register in the state forthwith. Unlike West Bengal, Kerala chose not to expressly justify that it was notifying this order on the grounds that it may interfere with “public order” even while it cited “apprehensions among the general public”.

It is important to distinguish between the N.R.C. in Assam with N.R.I.C. under the 2003 Rules. While the N.R.C. in Assam was carried out by a special bureaucratic arrangement under the Supreme Court’s oversight, the 2003 Rules proposed a “Population Register” that would enumerate every single person who is ordinarily resident in India²⁹, then sift citizens from non-citizens, and notify a National Register of Indian Citizens. In Assam, every individual was under an obligation to submit documentation proving their citizenship (or the citizenship of their ancestors), while in the 2003 Rules, one is first enumerated and then subject to unilateral administrative scrutiny.

Besides the anxiety pertaining to the purported connection between C.A.A. and N.R.C., what can states justify their non-cooperation on? It can be argued that the governing framework of the N.P.R. is itself coercive and opens up multiple avenues for weaponizing citizenship against people. Firstly, N.P.R. is dependent on the enumeration of individuals at the household level³⁰. Secondly, the 2003 Rules empower bureaucrats to mark whole families as “doubtful citizens”³¹ effectively preventing them from accessing their other rights as citizens.

28 “Kerala stays all activities linked to NPR updation” IANS December 20 2019

29 Rule 3(4) of The Citizenship (Registration of Citizens and Issue Of national Identity Cards) Rules, 2003

30 Rule 4 (1) of The Citizenship (Registration of Citizens and Issue Of national Identity Cards) Rules, 2003

31 Rule 4(4) of The Citizenship (Registration of Citizens and Issue Of national Identity Cards) Rules, 2003

In tangible terms, exclusion through such a procedure may deprive an individual of other forms of documentation necessary to emigrate from India, travel or settle within the country, or seek public employment.

The nature of rules is such that it empowers a local officer to render a citizen stateless and rights-less. The 2003 Rules also permit common people to object to the inclusion of a person in the draft N.R.C.³². In other words, any individual living anywhere in the vicinity could simply object to a family's citizenship.

In a stratified and often deeply contested social context, what can such a power in the hands of fellow citizens mean? Such a procedure can permit socially dominant groups to weaponize citizenship against vulnerable individuals. Therefore, the threat to public order is rather clear. More importantly, states are not only administrative units, they are “constituent political units” with distinct legislative and administrative fields. These specific fields cannot be encroached upon by the union³³. The union-state constitutional relationship is not one characterized by a superior administrative entity issuing instructions to a subordinate enforcement agency. In other words, state governments are not permitted to enforce legislation without any application of mind. In exercising their statutory duties and constitutional powers, state governments are required to be guided by constitutional principles. They cannot enforce legislation that they believe will have unconstitutional outcomes.

It must be understood that anxieties pertaining to N.P.R. were directly linked to the C.A.A. as well as the proposed N.R.I.C. Therefore, the nature of opposition from states to this trinity of C.A.A., N.P.R., and N.R.I.C. were varied, both in content as well as in strategy. In a timely piece, Kennedy (Kennedy, 2020) has explored if such an expression of federalism could be a “moderating force” on the union government’s centralizing tendencies. There is little evidence to suggest that such opposition by states is likely to impact the union government’s legislative agenda. At this stage, it may be more helpful to analyze the nature of state opposition and to perhaps identify the kinds of constitutional avenues that have been opened up by their actions.

Kerala³⁴ and West Bengal³⁵ not only chose to use administrative instructions in order to stay N.P.R., but also followed these notifications with the adoption of resolutions in state assemblies. While lawyers may justifiably question the “bindingness” or “legal

32 Rule 4(6) of The Citizenship (Registration of Citizens and Issue Of national Identity Cards) Rules, 2003

33 Supra, note 11

34 Resolution adopted by the Legislative Assembly of Kerala on December 31 2019

35 Resolution adopted by the Legislative Assembly of West Bengal on January 27 2020

value” of these resolutions, one should not be in such a hurry to dismiss their significance. These resolutions are instruments of representative constitutional bodies expressing their constitutional disagreement. It must be remembered that some state governments limited them solely to public statements opposing C.A.A., N.P.R., or N.R.C. In contrast, a significant number of states actively pursued a constitutional mechanism to express their disagreement in clear terms. If it was merely a question of making a legally non-binding political statement, governments had many other avenues, including press releases or media interviews.

State assemblies are elected bodies with constitutionally allocated powers by choosing to use constitutional machinery, these states perhaps elevated the question of NPR to a constitutional dispute. Judicial adjudication is not the only avenue when such disputes arise. In fact, it could be argued that a significant portion of constitutional disputes are resolved politically, through conventions or political arrangements. After all, constitutional government is a human enterprise and those who are called to work it necessarily need to develop different constitutional means of resolving these disputes.

These resolutions are not only important because of their use of constitutional machinery but also for their content. It may help to catalogue what was common between them and what was not. In an analysis of twelve resolutions adopted by legislatures, seven resolutions expressed concerns against the C.A.A., N.P.R., and the N.R.C.³⁶. Out of these seven, two (New Delhi³⁷ and Puducherry³⁸) were adopted by union territory legislatures and not states. Two state legislatures – Bihar³⁹ and Andhra Pradesh⁴⁰ – do not address C.A.A. at all and restricted their resolutions solely to N.P.R.

36 Kerala, Punjab, Rajasthan, West Bengal, Puducherry, New Delhi and Telangana

37 Resolution adopted by the Legislative Assembly of the National Capital Territory of Delhi on March 13 2020

38 Resolution adopted by the Legislative Assembly on February 12 2020. Extracts from “Now Puducherry Assembly too adopts resolution against CAA, NPR and NRC”, National Herald/Press Trust of India, February 12 Available at: <https://www.nationalheraldindia.com/national/now-puducherry-assembly-too-adopts-resolution-against-CAA-npr-and-nrc>

39 Resolution adopted by the Legislative Assembly of Bihar on February 25 2020 (Original in Hindi, translated copy on file). It is significant to note that while Bihar demanded that enumeration should be carried out in accordance with the NPR 2010 questionnaire, it did request that the column on gender include ‘transgender’, which was not provided for in the 2010 questionnaire. With respect to NRC, the resolution merely stated that “there was no need” for NRC in the state

40 Resolution adopted by the Legislative Assembly of Andhra Pradesh on June 17 2020. The state requested that NPR be kept in abeyance till one could revert to the 2010 questionnaire and reiterated its “principled stand against NRC”

and N.R.C. Interestingly, Gujarat⁴¹ and Goa⁴² adopted “congratulatory resolutions” welcoming the enactment of C.A.A. while remaining silent on the N.R.C. and the N.P.R. Meghalaya’s legislative assembly adopted a resolution seeking a complete exemption from the application of C.A.A.⁴³

There is significant overlap within the seven resolutions that opposed the C.A.A., N.P.R., and N.R.C. but there are also visible divergences. For example, all of these resolutions cited “apprehensions” or “panic” among various sections of society pertaining to the implementation of the C.A.A., N.P.R., and N.R.C. in conjunction with each other. They also uniformly refer to secularism, equality, and equal protection of laws as the basis of their opposition, while even acknowledging the widespread protests against C.A.A., N.P.R., and the N.R.C.

As discussed in this chapter, implementing the citizenship framework is effectively the legal responsibility of the states. It is officers and employees of the state government who are entrusted with enumeration of the National Population Register. Constitutionally, the administrative control of these enumerators is exclusively with the state governments⁴⁴. However, the constitutional scheme does not permit state governments to pick and choose which union legislation they enforce. Therefore, even if a state chooses to merely express disagreement, it would require a constitutional justification rooted in more than just a policy argument. Perhaps this is why each of these seven resolutions expressly chose to refer to public apprehensions, panic, or fear. In other words, such public fear is likely to create severe risks to public order. In the interests of protecting public order, going ahead with a procedure that is likely to evolve into the National Register of Citizens would not be possible. Furthermore, the references to the constitutional values of secularism, equality before law, and equal protection of the law should not be seen as mere platitudes. By foregrounding their objections and disagreements within the constitutional framework, the legislatures clearly signaled that this was not a routine administrative disagreement between the union and states, but an exceptional constitutional issue.

41 Resolution adopted by the Legislative Assembly of Gujarat on January 10 2020 (Original in Gujarati, translated copy on file)

42 Resolution adopted by the Legislative Assembly of Goa on February 3 2020

43 “Meghalaya Assembly passes resolution urging Centre to keep state out of CAA”, Outlook/Press Trust of India, March 16 2020. Available at: <https://www.outlookindia.com/newscroll/meghalaya-assembly-passes-resolution-urging-centre-to-keep-state-out-of-CAA/1763477>

44 Entry 41, List II (State List), Schedule VII to the Constitution of India. Also, Para. 1.5 of the Instruction Manual for Updation of National Population Register 2020 for Enumerators and Supervisors Office of the Registrar General & Census Commissioner, India, Ministry of Home Affairs, Government of India

After all, state governments and legislatures are not administrative units of the center. They are full-fledged constituent units of the union. The people who are called to work upon these constitutional entities must be guided by constitutional principles. Those called to work the constitution are bound by constitutional oath. They cannot act in furtherance of an objective knowing it to be unconstitutional (Mohammed & Prasad, 2020).

It is perhaps rare for states to raise a constitutional dispute in such a manner without seeking judicial redress. When courts are called upon to resolve constitutional disputes, they restrict and limit the nature of the dispute solely to technical tests. Furthermore, challenging laws before courts is further restricted in scope. Unelected judges are unlikely to understand or sympathize with the difficulties of enforcing laws when there is mass fear or anxiety. In contrast, state legislatures are inherently political entities. Their constitutional interpretation may not carry the same finality or force of the law that judicial pronouncements do but they can choose to withhold cooperation if they find that their actions may produce unfraternal or unconstitutional outcomes. It can be argued that not all constitutional grievances are justiciable but that does not mean that they are beyond redress.

While none of these resolutions refers to fraternity, their choice to protect those who are likely to be most impacted by such laws must not be dismissed. For example, West Bengal called the use of "religion as a yardstick for citizenship" as an attempt by the ruling party to "drive a wedge among people". These resolutions also expressly state how exclusion of certain groups from C.A.A. is not acceptable. Similarly, the fact that they allude to the divisive result of such laws is an allusion to the fear of unfraternal outcomes. For example, Punjab's resolution was concerned with the exclusion of Muslims and Jews from C.A.A. 2019. Along with Rajasthan, Punjab also raised the issue of excluding refugees of other neighboring countries from protections of the statute. Similarly, Puducherry was concerned about excluding Sri Lankan Tamil refugees and Rohingya Muslim refugees from protection of the law. While not referring to specific groups left out of C.A.A., Telangana⁴⁵ was concerned about the impact of N.P.R. on "vulnerable groups" including "illiterate persons, Adivasis, Dalits, Backward Classes, linguistic and religious minorities". West Bengal also referred to a previous resolution that "assured the people of this state that the N.R.C. would not be imposed [in] any form in this state where refugees would secure Indian citizenship without any distinction to their religion, caste[,] or creed". These are not just concerns rooted in equal treatment but are guided by a genuine fraternal concern for those excluded.

45 Resolution adopted by the Legislative Assembly of Telangana on March 16, 2020

Where do these states diverge? Most significantly, in what is demanded by them. For example, Kerala had restricted its resolution only to C.A.A. and demanded its “abrogation”. In contrast, Delhi did not refer to the repeal or amendment of C.A.A. at all. Punjab and Rajasthan demanded the repeal of C.A.A. but not that of the N.P.R. requesting only that it be carried out on the basis of the less intrusive questionnaire from 2010. Puducherry and West Bengal sought the abrogation of the C.A.A., the N.P.R., and N.R.C. Delhi also sought the “withdrawal” of N.P.R./N.R.C. but should the union government insist on going ahead it, it may “restrict the exercise to N.P.R. [only with its format from] 2010”. Delhi’s resolution also elaborated on the fears of failing to prove documentary citizenship and how that may result in them being “thrown into detention centers arbitrarily”. Telangana was the only state that demanded an amendment to C.A.A. so that “references to any religion or any foreign country” are removed. With respect to the N.P.R. and N.R.C., the Telangana Assembly urged the state government to “take all necessary steps to safeguard the people of Telangana from [...] N.P.R. and N.R.C.”.

Kerala and Telangana were the only states to refer to the fear that C.A.A. 2019 would result in a theocratic state being institutionalized. Punjab was the only state (besides Meghalaya) that objected to C.A.A. not only because it was based on religion but also because it may threaten the “cultural and linguistic identity” of certain groups – possibly referring to Assam and other states in the north-east. In contrast, Rajasthan and Telangana referred to the experience in Assam with respect to N.R.C. West Bengal referred to another resolution that its Assembly had passed on 31 July 2018 demanding the withdrawal of “the N.R.C. in Assam which was a process to make refugees [out of] lakhs and lakhs of bona fide Indian citizens”.

Lastly, in making these demands, each resolution also provided unique ancillary justifications. Delhi wondered why such an exercise was needed when India was facing an economic crisis. Telangana cited the fact that carrying out the N.P.R. and the census exercise would result in massive confusion. It also referred to the state’s identity as “multicultural and diverse”. While West Bengal cited the lack of clear guidelines on the N.P.R., Telangana also specifically pointed out the confusion over whether data collection under N.P.R. would be voluntary or mandatory.

The above discussion points us to newer possibilities of how states view their own constitutional role and the different means that they possess in raising disputes and seeking redress. Rather than viewing themselves merely as passive entities that are not permitted to apply their own mind or question the constitutional propriety of the union’s decisions, states sought to raise questions rooted in constitutional principles.

Furthermore, they were also conscious of the extent to which they owed a duty to safeguard the residents of their own state and how such citizenship frameworks may burden them. It is not the states' willingness to withhold or not cooperate that is important here. Rather, it is the nature of the arguments that they brought forth to justify their demands. In the next section, I briefly outline how some federal jurisdictions are addressing similar disputes, and how they have sought to resolve them.

III. FOREIGN JURISDICTIONS

"Immigration federalism" scholarship in the United States has discussed the varied ways in which state and local jurisdictions have confronted the union on questions of immigration enforcement and integration (Schuck P. H., 2007). In popular construction, these confrontations are characterized as ones between pro-immigration "sanctuary" jurisdictions and a "tough-on-immigration" federal government. However, this is not borne out by the varying nature of these confrontations. For example, in the landmark U.S Supreme Court judgement *Arizona v. United States*⁴⁶, the conflict was between a state that sought to increase its immigration enforcement powers and a federal government that wanted to pre-empt the state from encroaching on its exclusive domain.

As Rodriguez points out (Rodriguez, 2017), immigration federalism can be viewed as a spectrum of federal-state cooperation on the question of immigration enforcement depending on the ideological underpinning of how immigration is dealt with by these actors. Similar conflicts are also increasingly being witnessed between state and local jurisdictions.

In a stark parallel to India's debate on documentary and enumerative citizenship of the N.P.R., states and the federal government in the U.S have either cooperated or refused to share information pertaining to citizenship status of drivers' license holders⁴⁷. In an even closer parallel to the N.P.R., states resisted the federal government's attempts to incorporate a question on citizenship in the national census⁴⁸.

46 567 U.S. 387 (2012)

47 "Four States Are Sharing Driver's License Info to Help Find Out Who's A Citizen", July 14 2020, NPR, <https://www.npr.org/2020/07/14/890798378/south-dakota-is-sharing-drivers-license-info-to-help-find-out-who-s-a-citizen>

48 "D.C., Maryland and Virginia join states and cities in lawsuit to block citizenship question from 2020 Census", Washington Post, Tara Bahrapour, April 4 (2018) Available at: https://www.washingtonpost.com/local/social-issues/dc-and-17-states-file-lawsuit-to-block-citizenship-question-from-2020-census/2018/04/03/85233ab8-3770-11e8-acd5-35eac230e514_story.html

Despite variations in institutional frameworks pertaining citizenship between India and the United States, there are very specific, common features. The most important of these is that states are increasingly the enforcers of federal citizenship law. By virtue of these circumstances, states are required to determine if their constitutional duty to enforce a union law conflicts with their duty to be faithful to the constitution. Unless there is an ideological or constitutional principle underpinning their understanding of the constitution, these conflicts may be difficult to resolve.

Does this mean that questions of federal cooperation and non-cooperation on citizenship are moot? That there is no way that these confrontations can be resolved unless citizenship is guided by fraternity? It is possible to envisage a situation where inclusive citizenship is guided by fraternal federalism. One may look to Canada, where scholarship on fraternal conception of federalism is being used to understand accommodation and multiculturalism (especially on the question of the Quebec province) (LaSelva, 1993). Provincial and federal cooperation on immigration in Canada has resulted in a provincial nomination system that enables provinces to seek out potential immigrants. Similar provisions exist in many migrant- receiving countries, including Australia⁴⁹. The Scottish government has also sought a similar framework for it to meet Scotland's "distinct" immigration needs within a "U.K. framework"⁵⁰. These examples are instructive because they show that it is possible for the federal and the provincial units to cooperate while also being respectful of the idea of inclusive and equal citizenship.

In conclusion, it must be understood that the intersections of federalism and citizenship are not new. Some of these tensions on citizenship and federalism are possibly inevitable. However, one requires principled, constitutional, and institutional responses to resolve such tensions. Reducing the question of citizenship— the right to have rights – to mere questions of federal competence and constitutional powers is likely to result in situations where states and the union alike can exercise these powers in unfraternal ways. Unless federalism is underpinned by the constitutional value of fraternity, it is unlikely that the Union and states cooperate in a constitutional manner. Cooperative institutional arrangements that are respectful to the principle of equal and inclusive citizenship are possible. However, they require the union to view the interaction of federalism and citizenship not as isolated issues pertaining to routine administration, but questions of constitutional principles.

49 Schedule 1 to the Migration Amendment (New Skilled Regional Visas) Regulations 2019

50 "Migration: helping Scotland prosper", January 27 2020. Scottish Government. Available at: <https://www.gov.scot/publications/migration-helping-scotland-prosper/pages/6/>

BIBLIOGRAPHY

- Ahmad, M. I. (2014).** The Citizenship of Others. 82 Fordham L. Rev. 2041.
- Ambedkar, B. (2014).** Philosophy of Hinduism. In *Collected Works of Babasaheb Dr. Ambedkar* (Vol 3) (p. 516). New Delhi: Dr. Ambedkar Foundation.
- Ambedkar, B. R. (2014).** Riddles in Hinduism: An Exposition to Enlighten the Masses. In *Dr. Babasaheb Ambedkar: Writings and Speeches Vol. 4* (p. 382). New Delhi: Dr. Ambedkar Foundation.
- Amnesty International. (2019).** Designed to Exclude. Bengaluru: Indians for Amnesty International Trust.
- Arendt, H. (1973).** The Origins of Totalitarianism.
- Arora, B. (2007).** India's experience with federalism: lessons learnt and unlearnt. *Constitutionality and Diversity in Nepal*.
- Azad, A. K., Mander, H., & Bhat, M. A. (2020).** Citizenship and the Mass Production of Statelessness in Assam. In *India Exclusion Report* (p. 308). New Delhi: Three Essays Collective with Centre for Equity Studies.
- Baogang He, B. G. (2009).** Federalism in Asia. Edward Elgar Publishing Ltd.
- Baruah, P. (2011).** Democracy, Representation, and Self-Rule in the Indian Constitution. *Law and Politics in Africa, Asia and Latin America*, 177-195.
- Baruah, S. (1999).** *Nation Against Itself*. University of Pennsylvania Press.
- Beken, C. V. (2019).** Balancing between empowerment and inclusion: Multinational federalism and citizenship rights in Ethiopia. *African Journal of International and Comparative Law*, 27(4), 588-608.
- Bingham, L., & Arnpriester, N. (2019).** Unmaking Americans (p. 196). Open Society Justice Initiative. <https://www.justiceinitiative.org/publications/unmaking-americans>
- Brandzel, A. L. (2016).** *Against Citizenship: The Violence of the Normative*. University of Illinois Press. <https://www.jstor.org/stable/10.5406/j.ctt18j8xbq>
- Gaventa, J. (2002).** Introduction: Exploring Citizenship, Participation and Accountability. Institute of Development Studies Report.

Hinton, R. (2010). Identity, Citizenship and Federalism: The Case of New Nepal. CARE Nepal.

Hodson, M. (2020). "Modern Day Trojan Horse?" Analysing the Nexus between Islamophobia and Anti-Refugee Sentiment in the United States. *Islamophobia Studies Journal*, 5(2), 267–282. <https://doi.org/10.13169/islastudj.5.2.0267>

Jayal, N. (2016). Citizenship. In M. K. Sujit Choudhry, *Oxford Handbook of the Indian Constitution*. Oxford University Press.

Justice Madan Lokur, J. (. (2019). Contested Citizenship in Assam: People's Tribunal on Constitutional Processes and Human. *People's Tribunal on Constitutional Processes and Human Cost*. New Delhi: People's Tribunal on Constitutional Processes and Human Cost.

Kennedy, L. (2020). Federalism as a Moderating Force? State-level Responses to India's New Citizenship Law. *South Asia Multidisciplinary Academic Journal*, 24/25. <https://doi.org/10.4000/samaj.6896>

Lambert, H. (2015). Comparative Perspectives On Arbitrary Deprivation Of Nationality And Refugee Status. *The International and Comparative Law Quarterly*, 64(1), 1–37.

LaSelva, S. V. (1993). Federalism as a Way of Life: Reflections on the Canadian Experiment. *Canadian Journal of Political Science / Revue canadienne de science politique*, Vol. 26, No. 2, 219-234.

Mohammed, A., & Prasad, M. (2020, February 4). Towards cooperative federalism. *The Hindu*. <https://www.thehindu.com/opinion/lead/towards-cooperative-federalism/article30729075.ece>

Mindus, P. (2009). The Contemporary Debate on Citizenship: Some Remarks on the Erased of Slovenia. *Revus*, 9, 29–44. <https://doi.org/10.4000/revus.425>

Murshid, N. (2016). Assam and the Foreigner Within: Illegal Bangladeshis or Bengali Muslims? *Asian Survey*, 56(3), 581-604.

Narrain, A. (2017). "What Would an Ambedkarite Jurisprudence Look Like?". *National Law School of India Review*, Vol. 29, No. 1, 1-20.

Nyers, P. (2011). No One is Illegal Between City and Nation. *Studies in Social Justice*, 4(2), 127–143. <https://doi.org/10.26522/ssj.v4i2.998>

Pisharoty, S. B. (2019). Assam: The Accord, The Discord. Penguin Random House India Private Limited.

Rodriguez, C. (2017). Enforcement, Integration, and the Future of Immigration Federalism. *Journal on Migration and Human Security*, 509-540.

Roy, A. (2010). Mapping Citizenship in India. Oxford University Press.

Sassen, S. (2005). The repositioning of citizenship and alienage: Emergent subjects and spaces for politics . *Globalizations*, 2(1), 79–94. <https://doi.org/10.1080/14747730500085114>

Schuck, P. H. (2000). Citizenship in Federal Systems. *The American Journal of Comparative Law*, Spring, 2000, Vol. 48, No. 2, 195-226.

Schuck, P. H. (2007). Taking Immigration Federalism Seriously. *University of Chicago Legal Forum*, 57-92.

Turner, E. F. (2002). Handbook of Citizenship Studies. Sage

The Future of Democracy in the Shadow of Big and Emerging Tech



**Centre for
Communication Governance,**
with support from the
**Friedrich Naumann Foundation
for Freedom (FNF)**



Published *by* National Law University Delhi Press, Sector
14, Dwarka. New Delhi 110 078

ISBN: 978-9384272-28-9

National Law University Delhi 2021

All Rights Reserved

Design *by* Ram | ramanaya.net

Supported *by*
Friedrich Naumann Foundation



We thank Smita K. Prasad for conceptualising and
helping curate the essays for this publication.

Edited *by* Kritika Bhardwaj, Sangh Rakshita and
Shrutanjaya Bhardwaj

Editorial Assistance provided *by* Aanchal Khandelwal,
Karthik Rai and Mustafa Rajkotwala



(CC BY-NC-SA 4.0)

Contents

1	1. Introduction by Shrutanjaya Bhardwaj
6	2. What is Big Tech? Four Conceptual Markers by Urvashi Aneja and Angelina Chamuah
20	3. Data, Democracy and Dominance: Exploring a New Antitrust Framework for Digital Platforms by Alok Prasanna and Manjushree RM
37	4. Fake News, Free Speech and Democracy by Rahul Narayan
54	5. Voting Out Election Misinformation in India: How Should We Regulate Big Tech? By Jhalak M Kakkar and Arpitha Desai
78	6. Disinformation Campaigns in the Age of Hybrid Warfare by Shreya Bose
97	7. Facial Recognition: Why We Should Worry the Use of Big Tech for Law Enforcement by Vrinda Bhandari
113	8. The IOT-loaded Smart City and its Democratic Discontents by Malavika Prasad

72

Certificate of Participation

This Certificate is Awarded to

Niharika Salar

In Recognition of the Contribution as Presenter of the Paper Entitled

Fast Fashion vs. Traditional Artists Rights within the Legal IP Regime: The Case for Empirical Evidence Based Findings

at the

FOURTH IP & INNOVATION RESEARCHERS OF ASIA (IPIRA) CONFERENCE

9-12 February 2022

Held Online

Organized by the IP and Innovation Researchers of Asia (IPIRA) Network with:

WIPO Academy, World Intellectual Property Organization

World Trade Organization, IP, Government Procurement and Competition Division

Ahmad Ibrahim Kuliyah of Laws, International Islamic University Malaysia

Texas A&M University School of Law

Faculty of Law, Universitas Indonesia

School of Law, University of Geneva

Nanyang Business School, Nanyang Technological University

Irene Calboli

Prof. Dr. Irene Calboli
Chair, Scientific Committee
Fourth IPIRA Conference



The Annual Survey of State Laws in India

Editors

Amita Dhanda • Faizan Mustafa

ANDHRA PRADESH					
	ASSAM				
BIHAR		CHHATTISGARH	NCT OF DELHI		
	GUJARAT		JHARKHAND	KARNATAKA	
KERALA	MADHYA PRADESH		MAHARASHTRA		ODISHA
	PUNJAB	RAJASTHAN			TAMIL NADU
TELANGANA		UTTAR PRADESH		WEST BENGAL	

Volume 1 • April 2022

Contents

Introduction – Amita Dhanda and Faizan Mustafa	v
1. Andhra Pradesh – Anindita Mukherjee	1
2. Assam – Pritam Baruah and Manash Pratim Dutta	13
3. Bihar – Vivek Mukherjee and Akansha Singh	23
4. Chhattisgarh – Nikita Agarwal	35
5. Gujarat – Neha Pathakji	45
✓ 6. Jharkhand – Prerna	53
7. Karnataka – Neela Badami	64
8. Kerala – Noor Ameen	76
9. Madhya Pradesh – Aymen Mohammed	88
10. Maharashtra – N. Vasanthi	102
11. Odisha – Rahul Mohanty	114
12. Punjab – Subhashini Shriya	126
13. Rajasthan – Subhashini Shriya	140
14. Tamil Nadu – Rohan K. George	152
15. Telangana – Aymen Mohammed and Amita Dhanda	166
✓ 16. The National Capital Territory of Delhi – Pranav Verma	183
17. Uttar Pradesh – Faizan Mustafa	194
18. West Bengal – Anirban Chakraborty	208

71x

DISCRIMINATION AND EMPLOYMENT LAW

INTERNATIONAL LEGAL PERSPECTIVES

Edited by
Joseph Roger Cashy-Hall, Zbigniew Góral
and Anna Tye

Chapter

Transformative Equality and Disability-Based Discrimination in Employment

A Case Study From India

By *Nimushakavi Vasanthi*

Book Discrimination and Employment Law

Edition 1st Edition

First Published 2022

Imprint Routledge

Pages 18

eBook ISBN 9781003306962

ABSTRACT

Disability as an evolving concept set out by the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) underlines the need to adopt a flexible definition of disability. Quantifying disability, while extending rights to persons with disabilities, sacrifices the needs of the individual and seemingly advantages the group. The Indian Supreme Court in two contrary decisions has dealt with the disadvantages emerging from quantification. In one instance it held that a person with a higher level of disability could not expect to hold a judicial office, and in the other it held that the support of a scribe was to be extended even though the threshold level of disability was not present. The chapter seeks to explain the difference between the decisions. It will look at disability-based discrimination law in India, which straddles two distinct branches of law: labour law and discrimination law. Labour law has been a result of historical struggles and has been built around many normative frameworks including a rights-based framework along with frameworks of exploitation and others. It has traditionally ignored many identity-based demands, and disability is a major gap in labour law frameworks which are largely focused on able-bodied persons. International human rights such as rights emanating from the UNCRPD are being incorporated into labour law in order to transform the understanding of disability. Discrimination law, on the other hand, largely based on individual claims, has been rooted in a liberal framework not sufficiently open to group claims. The chapter uses Noah Datz's proposition that the two branches can benefit from being read together. Datz writes that while labour law focuses on decommodification, discrimination law focuses on employer behaviour that does not treat workers strictly as factors of production but is inflected with bias.¹

The chapter examines how discrimination law can benefit from the principles that underlie labour law (e.g. questions of dignity, autonomy and citizenship) which allow it to move beyond specific acts of discrimination and look at more structural and systemic forms of discrimination. The specific context is the definition of disability as an objective exercise of quantification of disability in ensuring equal opportunities.



THOMSON REUTERS



CRIME PREVENTION AND CRIME CONTROL

In Indian Perspective



Edited by
Prof. (Dr.) Sarfaraz Ahmed Khan
Hifajatali Sayyed

Foreword by
Prof. (Dr.) Nirmal Kanti Chakrabarti
Vice Chancellor
West Bengal National University of
Juridical Sciences

CONTENTS

<i>Table of Cases</i>	xxv
<i>Foreword</i>	xxxi
<i>Preface</i>	xxxv
<i>Acknowledgements</i>	xxxix
<i>Abbreviations</i>	xli
<i>About the Contributors</i>	xlv

Introduction	1
<i>Prof. (Dr.) Sarfaraz Ahmed Khan and Hifajatali Sayyed</i>	
1 INTRODUCTION	1
2 THE SCOPE OF THIS BOOK	6
3 STRUCTURE OF THE BOOK	6

PART 1

CRIME PREVENTION AND PUBLIC POLICY

Chapter 1—Crime Prevention—Toward Evolving a Robust Strategy	21
<i>Dr. Dipa Dube</i>	
1.1 INTRODUCTION	21
1.2 UNDERSTANDING CRIME PREVENTION.....	22
1.3 MAJOR STRATEGIES TOWARD CRIME PREVENTION	24
1.3.1 SITUATIONAL PREVENTION.....	26
1.3.2 COMMUNITY PREVENTION.....	27

1.3.3 DEVELOPMENTAL PREVENTION.....	29
1.4 INTERNATIONAL DEVELOPMENTS.....	31
1.5 SOME REFLECTIONS ON INDIA.....	34
1.6 CONCLUDING REMARKS.....	37
Chapter 2—Preventive Justice in a Democratic State.....	39
<i>Chirag Balyan and Nilanjan Dey</i>	
2.1 INTRODUCTION.....	39
2.2 SETTING THE QUESTIONS AROUND PREVENTIVE POWERS.....	41
2.3 INVESTIGATING THE PREVENTIVE ENTERPRISE OF THE STATE.....	44
2.4 WHAT THE PREVENTIVE ENTERPRISE PROTECTS FROM: POSSIBLE DIRECTIONS OF ANALYSIS.....	49
2.5 PREVENTIVE JUSTICE IN THE CRPC 1973 AND STATE RESPONSE TO POPULAR PROTEST.....	50
2.6 THE SCHEME OF PREVENTIVE POWERS IN THE CODE OF CRIMINAL PROCEDURE 1973.....	51
2.7 CONTEXT: THE ANTI-CAA PROTESTS IN INDIA.....	56
2.8 STATE RESPONSE TO A POPULAR CHALLENGE TO ITS POWER.....	59
2.9 REMAINING QUESTIONS.....	60
2.10 CONCLUSION.....	60
Chapter 3—Proactive Crime Governance—A Progressive Policy Perspective.....	62
<i>Dr. Debasis Poddar</i>	
3.1 INTRODUCTION.....	62
3.2 THE CRIMINOLOGY-PENOLOGY-VICTIMOLOGY LINEAGE...	64
3.3 CRIME AND STATE: THE INBUILT INSTITUTIONALISM	67
3.3.1 EDUCATION.....	68
3.3.2 EQUITY.....	69

3.3.3 JUSTICE	69
3.4 BENTHAM TO KANT: NEED FOR A PARADIGM SHIFT	72
3.5 CONCLUSION	76
Chapter 4—Real Diseases and Fake Drugs, the Uneasy Co-existence – Exploring the Regulatory Frameworks and Its Failure in India	78
<i>Dr. K.V.K. Santhy</i>	
4.1 INTRODUCTION	78
4.2 AN OVERVIEW OF THE INDIAN PHARMACEUTICAL MARKET	78
4.3 CONSTITUTIONAL PROVISIONS AND PHARMACEUTICAL INDUSTRY	79
4.4 GRAVITY OF THE MENACE – COUNTERFEIT DRUGS	81
4.4.1 KINDS OF DRUGS	82
4.5 AN OVERVIEW OF LEGISLATIONS RELATED TO DRUGS AND MEDICAL DEVICES	83
4.5.1 BRIEF OVERVIEW OF THE DRUGS AND COSMETICS ACT	85
4.5.2 LEGISLATION RELATED TO PHARMACY	86
4.5.3 OFFENCES AFFECTING PUBLIC HEALTH – INDIAN PENAL CODE	87
4.5.4 POSSIBILITIES FOR AND LIMITS TO THE PUNISHMENT OF EXTRATERRITORIAL OFFENCES	88
4.5.5 SANCTIONS (INCLUDING CONSIDERATION OF CONFISCATION AND FORFEITURE)	88
4.6 DRUGS CONTROL ADMINISTRATION	89
4.6.1 CHECKS AT NATIONAL LEVEL	90
4.6.2 CHECKS AT STATE LEVEL	90
4.6.3 PRESENT STATUS OF EFFECTIVE CONTROL	91
4.6.4 DRUG PRICE CONTROL	92
4.7 PREPARATION OF COUNTERFEIT DRUGS – VARIOUS MODUS OPERANDI	92
4.8 LAW AND ISSUES IN ENFORCEMENT OF LAW	94

Applications, Challenges, and Opportunities of Blockchain Technology in Banking and Insurance

S. L. Gupta

Birla Institute of Technology, Noida, India

Pooja Kansra

Mittal School of Business, Lovely Professional University, India

Gagan Kukreja

*College of Business Administration, University of Bahrain,
Bahrain*

A volume in the Advances
in Finance, Accounting, and
Economics (AFAE) Book Series

IGI Global 
PUBLISHER of TIMELY KNOWLEDGE

Table of Contents

Foreword	xvi
Preface	xviii
Chapter 1	
Blockchain-Based Banking: Theory and Applications	1
<i>Fasel Qadir, University of Kashmir, Srinagar, India</i>	
<i>Gulnawaz Gani, University of Kashmir, Srinagar, India</i>	
<i>Zubair Jeelani, Islamic University of Science and Technology, India</i>	
Chapter 2	
Blockchain Adoption in Banking Systems: A Boon or Bane?	19
<i>Sugandh Arora, Lovely Professional University, India</i>	
<i>Tawheed Nabi, Lovely Professional University, India</i>	
Chapter 3	
Blockchain Technology and Future Banking: Opportunities and Challenges	43
<i>Derya Üçoğlu, Istanbul Bilgi University, Turkey</i>	
Chapter 4	
Blockchain for SMEs: Threats, Opportunities, and Future Research Trajectories	69
<i>Nicola Del Sarto, Scuola Superiore Sant'Anna, Italy</i>	
<i>Lorenzo Gai, University of Florence, Italy</i>	
Chapter 5	
Analysis of Key Barriers in Blockchain in Banking: ISM Ranking Approach	83
<i>Gargi Pant Shukla, Doon Business School, India</i>	
<i>Nitin Balwani, Doon Business School, India</i>	

Chapter 6

Significance of Blockchain in Banking and Insurance 99

Priti Sharma, IMT CDL, Ghaziabad, India

Ritesh Chandra, YES Bank, India

Chapter 7

Blockchain and Financial Market Innovation 128

Vandana Mehrotra, GD Goenka University, India

Meena Bhatia, Birla Institute of Management Technology, India

Chapter 8

Blockchain in the Banking Sector: Revolution or Digital Disruption?.....151

✓ *Tanveer Kajla, NALSAR University of Law, India*

Vishal Sarin, Lovely Professional University, India

Sahil Raj, Punjabi University, India

Chapter 9

Blockchain Technology in the Insurance Industry.....160

Sumit Oberoi, Symbiosis School of Economics, Symbiosis International

University (Deemed), India

Pooja Kansra, Lovely Professional University, India

Chapter 10

Blockchain Technology: The Way Forward Towards Transformation for the
Banking and Insurance Sectors.....173

Hesham Magd, Modern College of Business and Science, Oman

Ravi Thirumalaisamy, Modern College of Business and Science, Oman

Benson Ruzive, Modern College of Business and Science, Oman

Chapter 11

Blockchain Technology in Digitizing Bancassurance: A Theoretical
Perspective of Prospects and Confronts in India.....193

Diksha Verma, Chandigarh Group of Colleges, Landran, India

Pooja Kansra, Lovely Professional University, Jalandhar, India

Chapter 12

Blockchain Technology: Principles, Applications, and Advantages of
Blockchain Technology in the Digital Era.....204

Satveer Kaur, Maharaj Agrasen University, India

Neeru Jaswal, Chandigarh Group of Colleges, India

Harvinder Singh, Maharaja Agrasen University, India

Chapter 13

Integration of Blockchain Tokenisation in Real Estate: A Review.....213

Basit Ali Bhat, Lovely Professional University, India

Nitin Gupta, Lovely Professional University, India

Chapter 14

Cryptocurrency: A New Investment Avenue in India.....231

Pitresh Kaushik, Doon Business School, India

Neha Kukrety, Doon Business School, India

Chapter 15

Blockchain Application in Retirement Planning Investment: Improving
Transparency and Viability 246

Anup Sharma, Lovely Professional University, India

Nitin Gupta, Lovely Professional University, India

Chapter 16

Blockchain Technology: Present and Future Perspectives.....258

Tanya Kumar, Maharaja Agrasen University, India

Satveer Kaur, Maharaja Agrasen University, India

Compilation of References 266

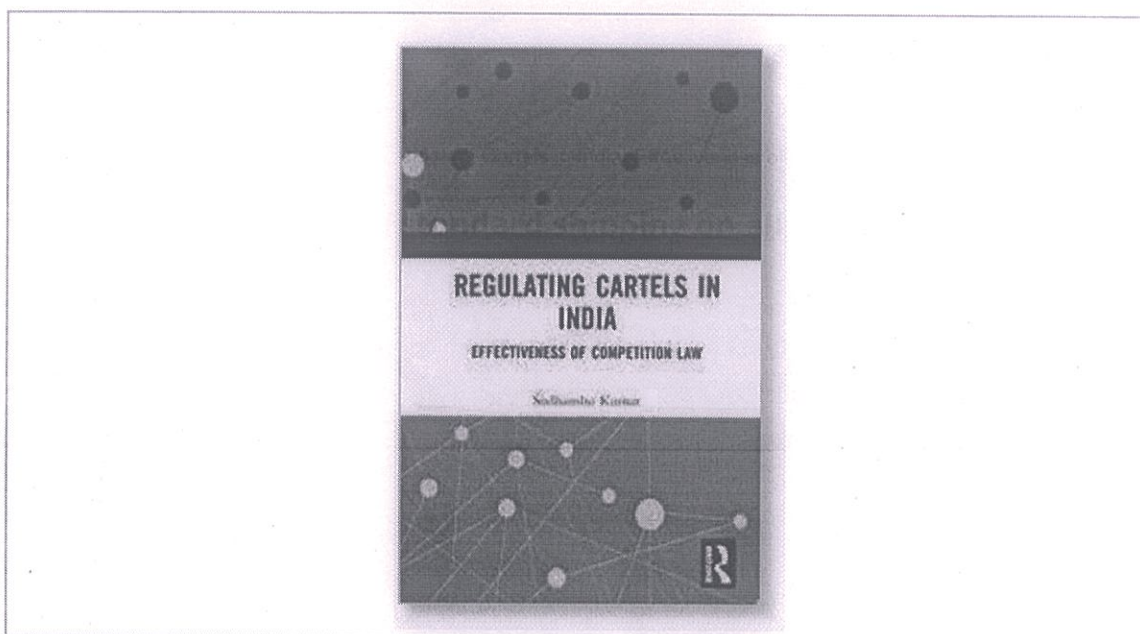
About the Contributors 295

Index..... 301

 **Free standard shipping on all orders**



Search by keywords, subject, or ISBN



1st Edition

Regulating Cartels in India

Effectiveness of Competition Law

By Sudhanshu Kumar

Copyright Year 2023

ISBN 9781032187310

Published November 23, 2022 by Routledge India

322 Pages 18 B/W Illustrations

➤ Available on Taylor & Francis eBooks

👁 Preview this title

We use cookies to improve your website experience. To learn how to manage your cookie settings, please see our [Cookie Policy](#). By continuing to use the website, you consent to our use of cookies.

ACCEPT

GBP £120.00

 ADD TO CART

PURCHASE LOCALLY

 Add To Wish ListPrices & shipping based on [shipping country](#).

Book Description

This book presents a comprehensive assessment of anti-cartel enforcement and investigative procedures in India. It makes a case for enhanced sanctions for cartel conduct in India. Cartels are considered the most pernicious violation of competition law, referred to as "cancer to the free market economy". While competition laws in most jurisdictions prescribe strict sanctions against cartels, Indian Competition Law provides only civil penalties, with an upper ceiling for proven cartel conduct.

This volume assesses the effectiveness of anti-cartel enforcement of the Competition Commission of India (CCI). It explores investigative procedures of the CCI through multiple qualitative and quantitative indicators and the extent to which enforcement of anti-cartel laws in India has led to cartel deterrence. Further, it also examines the priorities and processes of the CCI in terms of anti-cartel enforcement, their sanctioning mechanism and their dependency of computation of penalty on varied factors.

Featuring detailed case law studies and engaging data, this book will be an essential read for students and researchers of law and legal studies, competition law, corporate law, intellectual property law, and business law.

Table of Contents

Preface. List of Cases. Abbreviations. 1. Introduction 2. Conceptualizing Cartels 3. Characterizing Indian Cartels 4. Investigation of investigative procedures of CCI 5. Sanctioning Cartels 6. Organization Design and Anti-Cartel Enforcement 7. Conclusion

We use cookies to improve your website experience. To learn how to manage your cookie settings, please see our [Cookie Policy](#). By continuing to use the website, you consent to our use of cookies.

ACCEPT

Biography

Sudhanshu Kumar is an experienced academician and is currently working as an assistant professor of law at NALSAR University of Law, Hyderabad, India. He is also the coordinator for the Centre for Corporate and Competition Laws at NALSAR. He offers papers on corporate and competition law for both undergraduate and post-graduate students. Some of his publications include books on competition law, consumer protection law and capital market. He has worked on multiple government-sponsored projects and has been engaged in training professionals and administrative officers on corporate and commercial laws. Dr Kumar is also a member of the Network of Indian Competition Experts (NICE) of the Competition Commission of India.

Related Subjects

- Asian Studies
- Business & Company Law
- Commercial Law
- Regulation
- Area Studies
- Law

[Back To Top ^](#)

CONTACT US

[Customer Service](#)
[Editorial Contacts](#)
[Sales Contacts](#)
[Rights and Permissions](#)
[Become an Affiliate Partner](#) 

FAQS

PARTNERS

CUSTOMER RESOURCES

[Authors](#)
[Booksellers](#)
[Instructors](#)
[Librarians](#)
[Press and Media](#)
[Professionals](#)
[Societies and Associations](#)
[Students](#)

We use cookies to improve your website experience. To learn how to manage your cookie settings, please see our [Cookie Policy](#). By continuing to use the website, you consent to our use of cookies.

ACCEPT

78

Avtar Singh's

TEXTBOOK ON
CONTRACT
and Specific Relief

Eighth Edition

by

VARUN MALIK

BBA, LLB (H), LLM (NALSAR) (Gold Medallist)

Asst. Professor of Law

NALSAR University of Law, Hyderabad

EBC

Lucknow | Delhi | Prayagraj | Guwahati
Bengaluru | Ahmedabad | Nagpur

Brief Contents

<i>Sectionwise Contents</i>	xxiii
<i>Table of Cases</i>	xxxI
1. Agreement, Contract, Proposal and Acceptance	1
2. Consideration	31
3. Capacity to Contract	49
4. Free Consent	59
5. Legality of Object	88
6. Discharge of Contract	122
7. Contract of Indemnity	207
8. Guarantee	211
9. Bailment	238
10. Pledge	260
11. Agency	271
12. Specific Relief Act, 1963	319
<i>Subject Index</i>	425



The Annual Survey of State Laws in India

Editors

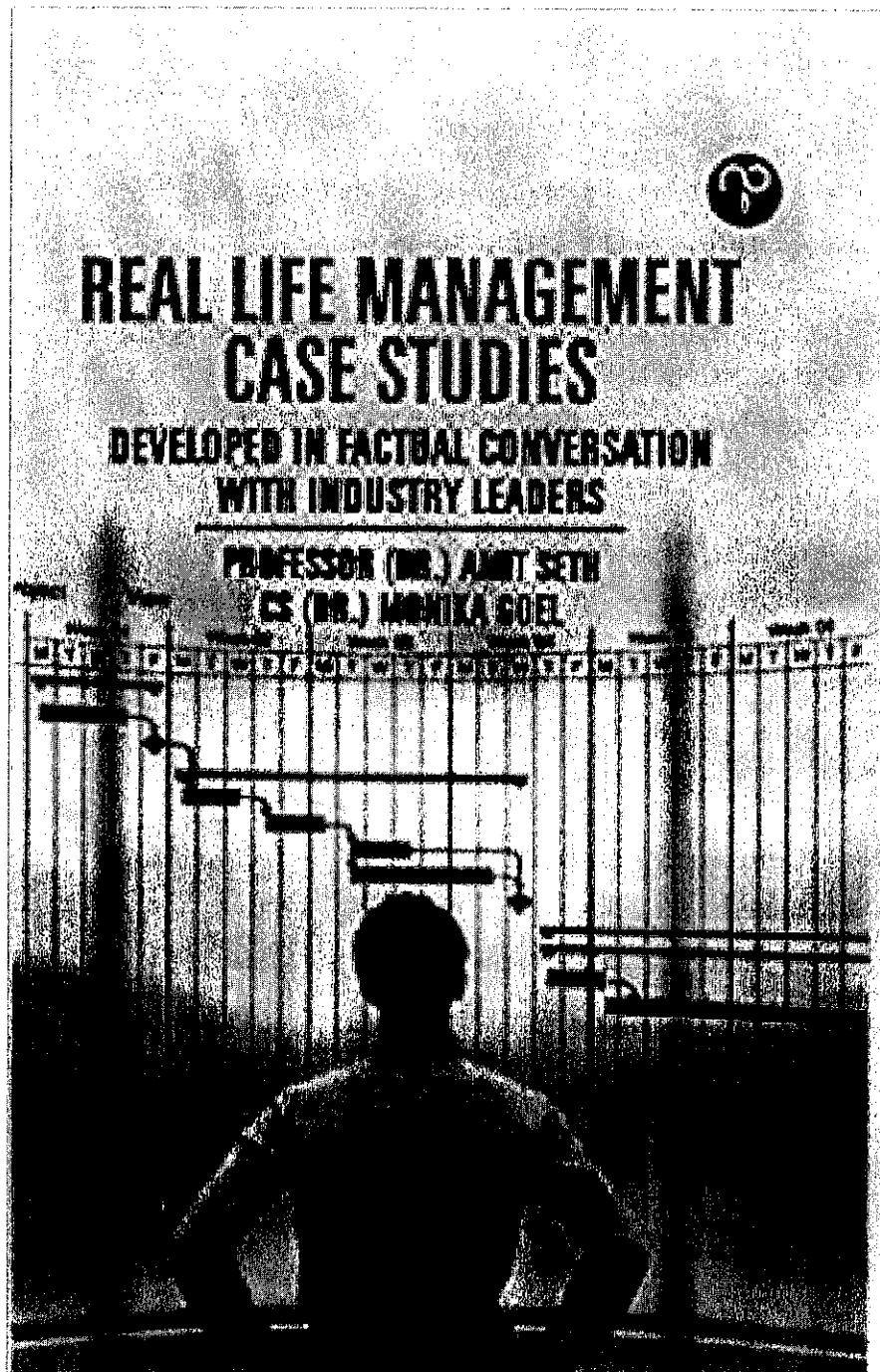
Amita Dhanda • Faizan Mustafa

ANDHRA PRADESH						
	ASSAM					
BIHAR		CHHATTISGARH	NCT OF DELHI			
	GUJARAT		JHARKHAND	KARNATAKA		
KERALA	MADHYA PRADESH		MAHARASHTRA		ODISHA	
	PUNJAB	RAJASTHAN			TAMIL NADU	
TELANGANA		UTTAR PRADESH		WEST BENGAL		

Volume 1 • April 2022

Contents

Introduction – Amita Dhanda and Faizan Mustafa	v
1. Andhra Pradesh – Anindita Mukherjee	1
2. Assam – Pritam Baruah and Manash Pratim Dutta	13
3. Bihar – Vivek Mukherjee and Akansha Singh	23
4. Chhattisgarh – Nikita Agarwal	35
5. Gujarat – Neha Pathakji	45
6. Jharkhand – Prerna	53
7. Karnataka – Neela Badami	64
8. Kerala – Noor Ameen	76
9. Madhya Pradesh – Aymen Mohammed	88
10. Maharashtra – N. Vasanthi	102
11. Odisha – Rahul Mohanty	114
12. Punjab – Subhashini Shriya	126
13. Rajasthan – Subhashini Shriya	140
14. Tamil Nadu – Rohan K. George	152
15. Telangana – Aymen Mohammed and Amita Dhanda	166
16. The National Capital Territory of Delhi – Pranav Verma	183
17. Uttar Pradesh – Faizan Mustafa	194
18. West Bengal – Anirban Chakraborty	208



- Publisher : Namya Press (24 March 2022)
- Language : English
- Hardcover : 178 pages
- ISBN-10 : 9355450370
- ISBN-13 : 978-9355450371

Contents

Acknowledgement v Preface vii **1. Veethree – A Case Study on
Future Prospects Riding on 1 Current Success**

Dr. Asish Kumar Panda, S. Krishna Soujanya, Dr. B. Madhubala,
Dr. Upasana Gupta, Dr. Kirti Khanna

2. Sarvodaya Healthcare: Making New Inroads & Gaining 16

Momentum

Dr. Priyanka Singh, Dr. Uma Ananth, Dr. Mamta Kumari,
Dr. Shweta Sagar & Dr. Arti Joshi

3. Sledgehammer – Navigating Challenges Through Innovation

25 Dr. Subodh Saluja, Dr. Sonal Trivedi, Dr. Shobha Menon,
Dr. Deepa Pillai

4. Analysis of Niche Product Marketing Strategy- A Case Study
38 of Varahi Limited

1

Veethree – A Case Study on Future Prospects Riding on Current Success

Dr. Asish Kumar Panda, S. Krishna Soujanya, Dr. B. Madhubala, Dr. Upasana Gupta, Dr. Kirti Khanna

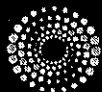
Abstract

This case narrates the journey of Veethree for over 4 decades, catering to speciality needs of specific industries in India and overseas, and working through challenges from time to time. Established in 1976, visionary and passionate T.M. Lalani led his enterprise to great heights through sheer hard work, perseverance and networking through automobile and marine industries. His team got a boost through his son Vishal Lalani joining him in 1991 after acquiring relevant education. They expanded their operation to USA, UK and New Zealand to get locational trade con-

81

FUNDAMENTALS OF NATIONAL SPACE LAWS

Edited by
Prof. (Dr) Sandeepa Bhat B.
Dr Shouvik Kumar Guha



THOMSON REUTERS

5.2.2.2 Promotion of the Outer Space Industry (Articles 5 and 18).....	69
5.2.2.3 Registration of Space Objects (Articles 8 and 9).....	70
5.2.2.4 Licensing Requirement (Articles 11, 12 and 13).....	70
5.2.2.5 Liability and Compensation Claims (Article 14).....	71
5.2.2.6 Rescue of Astronauts and Restitution of Space Objects (Articles 22 and 23).....	71
5.2.3 The Compensation Act.....	71
5.2.3.1 Recovery of Compensation by the Government (Article 3.1).....	72
5.2.3.2 Liability and Insurance (Articles 4, 5, 6.1 and 8).....	72
5.2.3.3 Enforcement Action (Article 7).....	73
5.3 COMPARATIVE ANALYSIS OF THE DOMESTIC AND INTERNATIONAL LAWS.....	73
5.3.1 Registration.....	73
5.3.1.1 Overview.....	73
5.3.1.2 Sufficiency.....	74
5.3.2 Authorisation and Supervision.....	74
5.3.2.1 Overview.....	74
5.3.2.2 Sufficiency.....	75
5.3.3 Liability.....	76
5.3.3.1 Overview.....	76
5.3.3.2 Sufficiency.....	77
5.4 CONCLUSION.....	78
Chapter 6—LEGAL RESPONSE TO PRIVATE SPACE ACTIVITIES IN JAPAN.....	79
Shruthi Prabhakar.....	
6.1 INTRODUCTION.....	80
6.2 JAPAN'S SPACE JOURNEY.....	82
6.3 IMPLEMENTATION OF INTERNATIONAL SPACE OBLIGATIONS BY JAPAN.....	85
6.3.1 State Responsibility and Liability.....	86

6.3.1.1 Authorisation and Supervision.....	ix
6.3.1.2 Registration.....	86
6.3.2 Risk Liability.....	87
6.3.3 Liability for Environmental Damages.....	88
6.3.4 Dispute Settlement.....	90
6.3.5 Use of Outer Space for Peaceful Purposes.....	91
6.4 CONCLUSION.....	91
Chapter 7—NATIONAL SPACE LAW FOR INDIA: A REALITY CHECK.....	92
Prof. (Dr) Sandeepa Bhat B.	94
7.1 INTRODUCTION.....	94
7.2 FACTORS NECESSITATING NATIONAL SPACE LEGISLATION IN INDIA.....	96
7.3 ONGOING EFFORTS TO DEVELOP SPACE LAW.....	100
7.4 DRAFT SPACE ACTIVITIES BILL, 2017.....	101
7.5 CONCERNS IN THE ONGOING EFFORTS.....	103
7.6 CONCLUSION.....	104
Chapter 8—A REVIEW OF THE DRAFT SPACE-BASED REMOTE SENSING POLICY, 2020: CHALLENGES AND OPPORTUNITIES.....	106
Ishita Das.....	
8.1 BACKGROUND.....	107
8.1.1 Remote Sensing Data Policy, 2001.....	107
8.1.2 Remote Sensing Data Policy, 2011.....	108
8.2 ESSENTIAL FEATURES OF THE DRAFT POLICY, 2020.....	109
8.2.1 Aim.....	109
8.2.2 Core Objectives.....	110
8.2.2.1 Encouragement of Participation of Commercial Players.....	110
8.2.2.2 Facilitating 'Ease of Access' to Remote Sensing Data.....	110

With the halt in the development of international space law, the focus has shifted to national space legislation to regulate the ever-increasing space activities. Unfortunately, very few States have space laws at present, and there is no uniformity in the approaches of those that have such laws. Most of the space-faring nations, including India, China and several European States, do not have the requisite legal regime to regulate space activities. In the absence of legal clarity, private players are hesitant to undertake space activities in these jurisdictions. Thus, enacting balanced national space laws is the need of the hour in several jurisdictions across the globe. *Fundamentals of National Space Laws* intends to cover all the major tenets relating to the development of national space laws. Hence, it will be an invaluable resource on the bookshelves of every space law and policy maker as well as every space lawyer.



PROF. (DR) SANDEEPA BHAT B. and DR SHOUVIK KUMAR GUHA are faculty members at the National University of Juridical Sciences (NUJS), Kolkata, one of the premier national law universities in India. Being, respectively, the Director and Associate Director of the Centre for Aviation and Space Laws at NUJS, Prof. Bhat (top) and Dr Guha (bottom) have worked extensively on space law. Prof. Bhat's three books on various aspects of space law are reference books at several reputed institutions. He also holds the distinction of being a member of three internationally renowned bodies working on space law.

Price INR 1250

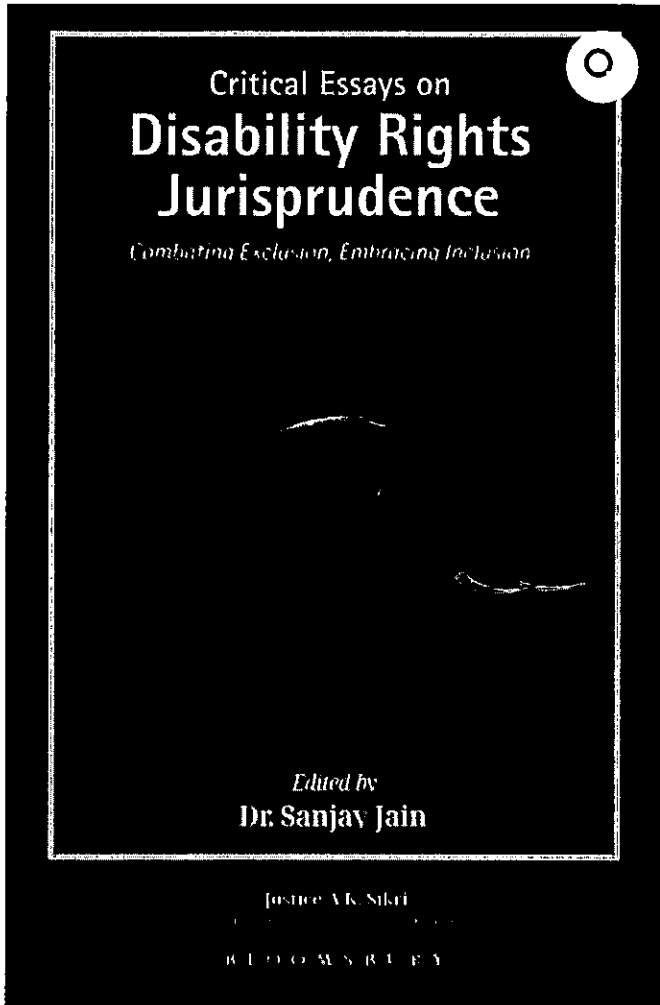
ISBN 978-93-93702-83-8



9 789393 702838



THOMSON REUTERS



Bloomsbury Critical Essays On Disability Rights Jurisprudence By Dr. Sanjay Jain – 6th Edition 2022

₹799 ₹555

BLOOMSBURY'S
CRITICAL ESSAYS ON
DISABILITY RIGHTS
JURISPRUDENCE BY
DR. SANJAY JAIN –
6TH EDITION 2022

1

Add to cart

Add to wishlist

ISBN: 9789390513604 SKU: 686 **Categories:**

Featured Product Collection, NEW RELEASES Tag:

9789390513604

Description

Description

Keynote

Mainstream scholarship still does not attach much relevance to either disability rights jurisprudence or disability legal studies. This book aims to fill this deficit by pushing the disability rights jurisprudence into



the mainstream through high quality articles written by prominent scholars like Professor Upendra Baxi, Professor Amita Dhanda.

Description

The book is a collection of high quality research papers contributed by eminent academicians, philosophers and jurists. The main objective of this book is to disseminate and spread awareness about Rights of Persons with Disabilities (RPWD). Secondly, the book also provides useful inputs to activists, lawyers, jurists and academicians to evolve empowerment strategies for recognition, promotion and protection for RPWD. Besides the Indian scenario, the book also explores developments in disability rights in countries like Nepal, Sri Lanka and USA thereby broadening the horizon of the field. Besides, there are also high quality articles engaged in human rights discourse focusing on international law standards of RPWD.

Contents of the book

Introduction – Dr. Sanjay Jain and Ms. Tresa Paul

PART I – DISABILITY, LAW AND SOCIAL THEORY

Chapter 1 While Exclusion may or may not be intentional, Inclusion must always be– Hon'ble Justice Dr. D.Y. Chandrachud

Chapter 2 The deeper meaning of Disability: Ambedkar and the Social Theory of Disability– Prof. Upendra Baxi

Chapter 3 Legal capacity and the dilemmas of Ableism: Reflecting on the life and work of Dr. Shirish Deshpande– Prof. Amita Dhanda

Chapter 4 The path of an expert in Human Rights– Prof. María Soledad Cisternas Reyes

Chapter 5 Reflections on Constitutional and Legal Conception of Disability in India– Dr. Sanjay Jain

Chapter 6 Shifting the Epistemic Centre: Teachings from Sign Linguistics– Tanmoy Bhattacharya

Chapter 7 Gender and Disability: Perspectives of Adolescent Girls from Delhi (India)– Prof. Renu Addlakha

Chapter 8 Disabilities and the Capabilities Approach: A Philosophical Critique – Dr. Biraj Mehta Rath

Chapter 9 My journey as a law clerk in the Supreme Court of India: Some reflections–Rahul Bajaj

PART II – DISABILITY COMPARATIVE LAW

Chapter 10 Critical Evaluation of the Rights of Persons with Disability Act, 2016 in the Light of United Nations Convention on Rights of Persons with Disabilities, 2006 – Dr. Shirish Deshpande and Dr. V. V. Deshpande.

Details

- **Binding :** Softcover
- **Publisher :** Bloomsbury



- **Author** : Dr. Sanjay Jain
- **Edition** : 1st Edition 2022
- **Language** : English
- **ISBN-10** : 9789390513604
- **ISBN-13** : 9789390513604

FOLLOW ME ON



Related products

-21% off

IDT Sāar

Handwritten Notes

Indirect Tax Laws

Key Highlights

- Covering all Amendments upto 30th April, 2021
- Reference to RTPs and MTPs Questions
- Author's Views for Conceptual Clarity
- Charts for Cross References

CA (Dr.) Mahesh Gour
CA (Dr.) K.M. Bansal



83-89



The Annual Survey of State Laws in India

Editors

Amita Dhanda • Faizan Mustafa

ANDHRA PRADESH					
	ASSAM				
BIHAR		CHHATTISGARH	NCT OF DELHI		
	GUJARAT		JHARKHAND	KARNATAKA	
KERALA	MADHYA PRADESH		MAHARASHTRA		ODISHA
	PUNJAB	RAJASTHAN			TAMIL NADU
TELANGANA		UTTAR PRADESH		WEST BENGAL	

Volume 1 • April 2022

Contents

Introduction – Amita Dhanda and Faizan Mustafa	v
1. Andhra Pradesh – Anindita Mukherjee	1
2. Assam – Pritam Baruah and Manash Pratim Dutta	13
3. Bihar – Vivek Mukherjee and Akansha Singh	23
4. Chhattisgarh – Nikita Agarwal	35
5. Gujarat – Neha Pathakji	45
6. Jharkhand – Prerna	53
7. Karnataka – Neela Badami	64
8. Kerala – Noor Ameena	76
9. Madhya Pradesh – Aymen Mohammed	88
10. Maharashtra – N. Vasanthi	102
11. Odisha – Rahul Mohanty	114
12. Punjab – Subhashini Shriya	126
13. Rajasthan – Subhashini Shriya	140
14. Tamil Nadu – Rohan K. George	152
15. Telangana – Aymen Mohammed and Amita Dhanda	166
16. The National Capital Territory of Delhi – Pranav Verma	183
17. Uttar Pradesh – Faizan Mustafa	194
18. West Bengal – Anirban Chakraborty	208

CHAPTER 2

**Changing Economics of IP In
The Globalized World**

Ms. Phalguni Mahapatra
Prof. (Dr.) Anindya Sircar*

ABSTRACT

Intellectual property law is a tool which helps inventors or innovators in protecting their creative knowledge. In the absence of this protection, they will be at loss because it will be difficult for them to recoup their investment and on the other hand, imitator of their work does not have to bear the high cost of creation. As a result, it would lead to under-investment in innovative activities. In the greatly integrated international markets, trade and investment is also playing a pivotal role in regulating the intellectual property policies of a country. Hence, the aim of this article is to understand the economics of intellectual property law in the current time when the world has moved from the closed economy to an open economy. Further, the digital revolution has brought many changes in the contour of intellectual property regime. The conventional economic analysis of intellectual property is based on the friction between incentives and access. However, the widely accepted economic trade-off concept in intellectual property rights seems to have been challenged with the advent of technology. It has been discerned that the evolution of technology and internet has changed the landscape of the creation and exploitation of the creative work. Therefore, it makes it important to look at the economics of intellectual property taking into consideration the advanced technological facet.

Keywords: open economy; trade-off; digital revolution; economics.

*Phalguni Mahapatra, Research Assistant, DPIIT-IPR Chair, NALSAR University of Law, Hyderabad and Prof. (Dr.) Anindya Sircar, Chair Professor, DPIIT-IPR Chair, NALSAR University of Law, Hyderabad.

1. INTRODUCTION

The Intellectual Property (IP) law grants protection to creators with the objective to foster creativity and provide incentives for the producer to invest for creation of the innovative work. The exclusive protection provided under IP law will help creators reap the value which has been invested. The right holders have been granted economic and moral rights which they can use to protect their work. Some economists regard creative works to be a non-excludable and non-rival goods, the distortion of which gives way to the important concept of IP i.e., economic trade-off.

A robust IP system can bring about “spill overs, induce innovation, enhance trade and trade-related investment, and foster economic activity of IP-intensive industry”.¹ There are positive functions which are performed by intellectual property rights (IPR) in the economic system as by allowing appropriability, it is assuring rewards for the inventors. It assists in the diffusion of the information and knowledge by making details of the technological advancement publicly available.² For instance, the patent law grants 20 years of protection to the inventor and also, obliges them to disclose the details of their invention. Similarly, under the copyright law, the creator of a work has been bestowed with moral and economic rights. The minimum terms of protection as per the international instruments are life of author and 50 years and in some countries, protection has been raised to 70 years plus the life of author. The establishment of this legal setting is based on “the economics of copyright which sees this intellectual property rights as an instrument to stimulate the production and dissemination of creative works”.³ There is an increasing attention towards the economic ramification of IP due to the fact that “intangible goods such as software, drugs, film and music now constitute an increasing percentage of the gross national product (GNP) of industrial countries”.⁴

The global economy comprising of developed and developing nations are turning out to be innovation driver which is “powered by knowledge, creativity, and technology, each of which is fundamentally supported by intellectual

1 Allen N. Dixon, *Intellectual Property: Powerhouse for Innovation and Economic Growth*, IC-CWBO.ORG (June 23, 2022, 10:05 AM), <https://iccwbo.org/content/uploads/sites/3/2011/02/Intellectual-Property-Powerhouse-for-Innovation-and-Economic-Growth.pdf> p.11.

2 Cristiano Antonelli, *The Trade-off of Intellectual Property Rights Reconsidered*, 10 *Economica Rio de Janeiro* 15, 18 (2008).

3 Sacha Wunsch-Vincent, *The Economics of Copyright and the Internet: Moving to an Empirical Assessment Relevant in the Digital Age*, WIPO.INT (June 24, 11:23 AM) <https://www.wipo.int/publications/en/details.jsp?id=3953> p.2.

4 Niva Elkin-Koren And Eli Salzberger, *The Law And Economics Of Intellectual Property In The Digital Age: The Limits Of Analysis 3* (Routledge 2015).

property and intellectual ffproperty rights protections”.⁵ There are estimates which “conclude that the current value of intellectual property significantly outweighs the value of physical property – land, tangibles and intangibles together”.⁶ The creative works and inventions are proving to be the catalyst of growth and impacting the wealth of nations in the era of information economy. Ongoing economic globalization is a consequence of “technical change, reduced transport and communication costs, and market integration through reduction of impediments to investment and trade”.⁷ This advancement of technology and process of digitization is leading to changing landscape of economics of IP law.

This article in the first section gives the broad overview of the features of IP law system and also, outlines the basic economic trade-offs involved in IP law. Thereafter, in the next section the position of IP law in the open economy is explored and this section also entails the discussion on North-South divide on the protection of IP. Further, in the last section, an attempt has been made to shed light on the impact of digitization on the economics of IP. Finally, it is concluded with a view that it is now time to revisit the conventional economic analysis of the subject.

2. LAW AND ECONOMICS OF IP

2.1 BRIEF BACKGROUND OF IP LAW AND ITS IMPORTANCE

By investing intellectual efforts, an individual can create improvised products, superior services and the better method of performing certain things, which will bring advancement in the existing technology and enrich the cultural values in the society. Resultantly, the IP created poses economic value when it is brought into the market. The IP law grant exclusive rights to the rightful owners which enables them to be able to control the use of their intellectual assets and “economic returns on them depend on the costs of their creation, their desirability to potential users and the structure of markets in which they are sold”.⁸

The process of formulating a beneficial and pertinent IP system is an intricate thing for any country as different areas of IP protection like

5 Stephen Ezell and Nigel Cory, *The Way Forward for Intellectual Property Internationally*, ITIF (June 20, 03:30 PM), <https://itif.org/publications/2019/04/25/way-forward-intellectual-property-internationally/> p.1.

6 *Supra* note 5 at p.38.

7 Keith E. Maskus, *Intellectual Propertyrights In The Global Economy 2* (Institute For International Economics 2000).

8 *Id.* at p.27.

patents, trademark, copyrights, industrial design, *sui generis*, have distinct functions and significance which varies depending on the sectors. Further, the terms of IP protection which a country offers depend on, along with other factors, a “country’s position on the global technology ladder and on social concerns”.⁹ Similarly, the robustness of the IPR will be subject to “demand characteristics, market structure, and other forms of business and competition regulation”.¹⁰ As a result, IPR has been described as ‘inherently dynamic’ and “the relationships between economic development and IPRs are complex, with causation surely running in both directions”.¹¹ Keith E. Maskus has correctly highlighted the characteristics of IPR stating that it has an essential role in the progress of technology, industry and culture of a country and in the case of absence of IP protection, it can be detrimental for domestic inventive labour.

There is a *natural theory of justification* in the jurisprudence of IP law, according to this theory as the property created is out of intellect of an individual therefore, that individual should be granted the right to control further use of his work. However, this theory has always been contested stating that as the information belongs to the public in general and hence, its access should not be restricted by granting private rights. Further, the *utilitarian theory* which is also known as *incentive theory*, it is adopted in most of the legal system, balances the requirement of innovation and invention with the demand of dissemination of the information, this became “*the point of departure taken by economic analysis of IPRs*”.¹² For decades, this theory has been “the dominant law and economics paradigm for the analysis of IP, copyright and patent law in particular”¹³

Sometimes there could be a case where “there may be a divorce between the effectiveness of patents as appropriability tools and their rate of use since firms may use patents in order to attain other objectives”.¹⁴ For example, there is an often discussed issue about the issue of ‘patent thickets’ which means that due to rise in the patent application, there are certain instances wherein the patents have been granted on the interconnected and overlapping matters which then results into confusion as to who owns the patent. This becomes problematic when there is need to obtain license.

⁹ *Id.* at p.144

¹⁰ *Id.* at p.28.

¹¹ *Id.* at p.144.

¹² *Id.* at p.27.

¹³ *Supra* note 5 at p.57.

¹⁴ WIPO, <https://www.wipo.int/publications/en/details.jsp?id=289&plang=EN> (last visited June 22, 2022), p.4.

2.2 ECONOMICS OF IP

As mentioned in the above section, the IP has two objectives which are bestowing exclusive rights on the creator to stimulate the creative knowledge and to distribute this creative knowledge into the public. It can be seen that these objectives are contradictory in themselves, therefore, the appropriate manner “to structure an effective IP policy is to find a satisfactory trade-off resulting in the optimal levels of both”.¹⁵ Upon be able to formulate such an IP policy, a country will be able to observe positive impact on the economic activity which in turn will lead to economic development. This economic trade-off aims to “strike the balance between the short-term gratification of immediate consumption and the long-term process of providing economic incentives that reward creativity and foster a dynamic culture”.¹⁶ Many economics have referred to two types of market failures in the IP regime, these are: *first*, attributing creative works as public goods without any legal protection and *second*, the market power of owners of creative work with the legal protection. It has been stated by Lancaster and Lipsey in their general theory of second-best that “the removal of one type of market failure does not reliably increase social welfare in the presence of other types of market failure”.¹⁷

As per the economic theory, “with little copyright protection, too few works are supplied and with copyright protection, existing works will be too costly to access compared to an ideal market with marginal cost pricing”.¹⁸ It has been mentioned many a times by the scholars that two key economic properties of creative works make them fundamentally different from tangible goods, these are ‘non-rival’ and ‘non-excludable’. By ‘non-rival’ it means that these works can be accessed by many users at a moment without diminishing the individual value of consumption. On the other hand, ‘non-excludable’ implies that until and unless there exist any suitable exclusive legal rights, it is tough to avert the unauthorized access of the work. The IP system function on the market distortion of ‘static efficiency’ and ‘dynamic efficiency’ i.e., static efficiency makes it necessary that the vast access to users should be available at marginal social cost and that could be of low cost. While, dynamic efficiency makes it requisite that there should be certain incentives present in order to make the investment in advanced information in which case development costs is transcended by social value.

¹⁵ Ivan Stepanov, *Economic Development dimension of Intellectual Property as Investment in International Investment Law*, 23 The Journal of World Intellectual Property 736, 738 (2020).

¹⁶ *Supra* note 4 at p.2.

¹⁷ Christian Handke, *Intellectual Property in Creative Industries: The Economic Perspective*, in Waelde, C. and Brown, A. (eds.) *Research Handbook on Intellectual Property and Creative Industries* 59 (Elgar 2016).

¹⁸ *Id.* at p.64.

Even though there exists conflict between both but there are legitimate objectives for the benefits of the public.

If an overly weak property rights are formulated which though fits into the static purpose but distorts the dynamic purpose by creating inadequate incentives for the creation of IP. This will have impact in the form of slow economy, restricted culture and inferior quality of product. On the other hand, overly strong property rights which satisfy dynamic objectives but has the potential to distort the static goals by limiting the access. This results into lack of availability of advanced information in the economy.

3. IP RIGHTS IN THE OPEN ECONOMY

The contour of IPR differs in open economy as compared to the closed one. Today, countries across the globe are connected by trade and investment. In the 1980s, with the advancing globalization of IP use by way of international trade, FDI, and licensing consequently lead to conflict with the existing IP regimes which further deteriorated in the 1990s.¹⁹ As per the statistics, it is demonstrated that during 1990s expansive international economic activity was witnessed, specifically trade of IP rights protected technologies and goods and the rise in patent and trademark application mainly in developing economies. Keith E. Maskus after analysing these data concluded that “increasing international demands for IPRs stems largely from the fact that in a globalized economy the creation of knowledge and its adaptation to product designs and production techniques are increasingly essential for commercial success”.²⁰

According to the present-day interconnected world, innovation in one part of the world has the ability to benefit nations across the globe. Therefore, the innovation policies of one nation have tendency to impact the global innovation. It was noted by the Australian innovation economist Jason Potts that “...*the economics of the innovation problem – market failure in producing new knowledge and knowledge as a public goods problem – is inherently global because new ideas and their externalities are not easily contained by national borders*”.²¹ In the global economy, new practice called ‘innovative mercantilism’ are being followed by the countries. This term refers to “a strategy that uses trade-distorting policies to advantage local technology local firms and production activities”.²² It is “a zero-sum game: it may bolster a

¹⁹ *Supra* note 8 at p.16.

²⁰ *Id.* at p.83.

²¹ *Supra* note 6 at p.14.

²² Nigel Cory, *The Worst Innovation Mercantilist Policies of 2017*, ITIF, <https://itif.org/publications/2018/01/22/worst-innovation-mercantilist-policies-2017/>.

country's own economy, particularly in the short-term, but reduces the global stock of knowledge and innovation".²³

In the American economy, sectors like pharmaceuticals, software, and recorded entertainment, where there is high scope of imitation and where multinational activities are involved, are significant net exporters. They exerted intense pressure on the government to introduce reform and "induce a massive shift in emphasis in US trade policy towards encouraging and forcing reform in IPRs in key developing economies".²⁴ In furtherance, the next phase of development in the international IP regime entailed commencement of bilateral trade agreements which were devised to promote the standard of IP protection adopted by the USA and those has to be followed by other countries. The countries which wished to gain the preferential market access to the USA were called for to abide by TRIPs-plus standard by the USA like data exclusivity.²⁵

Since the year 2000, the Regional Trade Agreements signed by the US, the European Union and Japan have all included the provisions for IPR which creates detailed and supplementary obligation in regards of the WTO-TRIPs Agreement. If the chapter referring to IP of FTAs, post TRIPs, signed with the US is seen then it can be noted that the IP provisions which is usually called as TRIPs-plus obligations are present. This is so called because it surpasses the minimum standards laid down in TRIPs and does not always allow the flexibilities as granted by the TRIPs Agreement in respect to compulsory licenses or any criteria of patentability.²⁶

Since 1980s, along with the unilateral efforts in the augmentation in IP laws playing instrumental role in the new global system, regional trade agreement bestowing obligations on IP are equally vital.²⁷ This process was commenced with the United States negotiating a series of bilateral investment treaties (BITs). BITs consist of key section which creates obligations on the partner country to create IPRs which are requisite for safeguarding exclusive technologies immanent in Foreign Direct Investment (FDI). Further, it was observed in chapter 17 of NAFTA wherein IPR became a fundamental part of the trade agreements. It has bestowed commitment for all three member countries (USA, Mexico and Canada) regarding the standards of protection which are robust in some instances than the TRIPs protection. Specially, Mexico and Canada are required to extend IPRs safeguards more than they have adopted.

²³ *Supra* note 6 at p.14.

²⁴ *Supra* note 8 at p. 4.

²⁵ *Supra* note 5 at p. 247.

²⁶ OECD, https://www.oecd.org/daf/inv/investment-policy/WP-2010_1.pdf (last visited: June 25, 2022) p.5.

²⁷ *Supra* note 8 at p. 5.

There are mainly four levels of coordination on IPRs which regional agreements seeks, these are:²⁸

- First, is where the objective is to achieve ‘full policy harmonization’ which means all the members are bound to adopt the same standards of protection, for example, European Union.
- Second, the formulation of high minimum standards wherein though the goal is not to attain harmonization but the commitment towards the standards which can exceed the standards as laid out in TRIPs, for example, NAFTA.
- Third, is where standards, which are bit lower but consistent with TRIPs, are adopted. This would lead to the policy divergence and make an obligation on countries to adopt TRIPs standards.
- Fourth, is “the approach based on mutual exhortation to proceed as is appropriate to each nation, without formal negotiations on IPRs”. This was the procedure followed in Asia Pacific Economic Cooperation Forum (APEC).

3.1 NORTH-SOUTH DIVIDE

There exist differences in the level of IP protection offered by the developed countries, for example, the US and the EU have formulated different approaches in patenting software; the US favours for less protective standards over the scope of protection for geographical indications.²⁹ Nonetheless, there runs a major difference in strength of IP protection between advanced nations/North and developing nations/South.³⁰ In the context of international trade and investment, owing to this variation in the level of IP protection, the economic trade-off becomes complexed.

Though there is a consensus amongst the advanced developing countries that “greater linkages to globalization processes through access to technology and information are critical for growth and stronger IPRs can play an important role providing that access”.³¹ On the contrary, there also lies different IP policies across the North-South lines as some of the developing nations have established “weak standards and limited enforcement for IPRs”.³² Sometimes the reasoning behind the weak IP protection is to attain non-economic aim like the development of local cultural industries. Similarly, the most essential aim in the global economy is to safeguard the public health by being able to obtain

28 *Id.* at p. 5.

29 *Id.* at p.35.

30 Alexi Maxwell and David Riker, *The Economic Implications of Strengthening Intellectual Property Rights in Developing Countries*, *Journal of International Commerce and Economics* 2, 2 (2014).

31 *Supra* note 8 at p. 4.

32 *Id.* at p. 4.

the cheaper medicines by not patenting it. The developed countries like Italy and Japan had no provision for patenting of pharmaceutical products up until late 1970s.³³ The scholars supporting stronger IP protection in developing countries states that “stronger IPR would lead to more resources committed to building up the indigenous R&D capability of the developing country firms while inducing a higher rate of technology transfer from developed countries to developing countries”.³⁴ There was dissatisfaction raised by the countries in Global North regarding the insufficient protection and enforcement of intellectual protection in developing nations. On the other hand, the Global South countries complained inequal dissemination of benefits within the regime of IPR. These latter countries were also infuriated as “they had to bore the brunt of globalization and the detrimental effects of string IP protection and enforcement”.³⁵

It has been believed that if IP laws are strengthened in the South, then there is an ambiguous impact on international trade flowing from the North to the South. Additionally, the South will witness a crucial influence on foreign direct investment.³⁶ Likewise, the process of reformation of IPR in the South leads to boost in FDI from the North because of the shift of production firms from North to South. This leads to expansion of industrial growth in FDI. According to the OECD study, “a 1% increase in the strength of patent protection correlates to a 2.8% increase in FDI and similarly, increase of trademark and copyright protections correlates to a 3.8% and a 6.8% increase in FDI, respectively”.³⁷ It is believed that as “the South’s share of global manufacturing and the pace at which production of recently invented goods shifts to the South both increases and likewise, as production shifts to the South, Northern resources will be reallocated to R&D, driving an increase in the global rate of innovation”.³⁸

Further divide can be witnessed in the form of the countries who are net exporting and net importing. The developed countries like “the USA and the UK are net exporters of intellectual property which means that these countries export more intellectual property in value than they import”.³⁹ These net exporting countries enjoy financial advantage out of prominent protection of IPR across the world, this means the creators from exporting countries will be

33 *Id.* at p.35.

34 *Supra* note 15 at p.63.

35 Peter K. Yu, *Intellectual Property, Global Inequality and Substantial Policy Variations*, SSRN (June 27, 2022, 05: 33 PM), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3760413 p.1.

36 *Supra* note 31 at p.8.

37 *Supra* note 2 at p.9.

38 *Id.*

39 Charlotte Waelde, *Review – Intellectual Property Rights in the Global Economy* ISBN 0-88132-282-2, 13 *International Journal of Law and Information Technology* 295, 295 (2005).

able to enforce their IPR in importing countries. Basically, it would indicate the inflow of the revenue from importing nations to exporting nations. The net importers of new technologies and high-technology products are often considered to be the developing nations.⁴⁰ When a country imports goods and technologies which might qualify for IP protection has to “count several costs of protection, including higher prices for imports, potential competitive abuses in the exploitation of IPRs, employment losses in imitative and copying industries, and restricted access to international technologies”.⁴¹

The developing nations which are often net importers of technical know-how have usually developed entirely diverse attitude in regards to IP protection.⁴² Amongst the North nations, “producers gain from higher profits while consumer process remain largely unchanged, resulting in net negative welfare effects”.⁴³ The importing nations having stronger IP protection permits the foreign exporters “to behave more monopolistically and to choose to serve the exporting market by foreign direct investment or by licensing its intellectual asset to a foreign firm which is known as the *market power effect*”.⁴⁴ Likewise, it also boosts the exports into foreign market “due to the shrinkage of imitative activities in importing countries, which is known as the *market expansion effect*”.⁴⁵

4. ECONOMICS OF IPR IN THE INTERNET AGE

The proliferation of the digital economy equipped by broadband inflow along with magnifying computing power and storage has led to the creation of global market which in a way favours the content creators and right holders.⁴⁶ Nevertheless, the digital revolution in the current era which we are witnessing has also brought woes for the IP right holders as now there is an easy access to an information and the marginal cost of copying has been reduced to zero. This, as a result, has given rise to the rampant piracy. The music industry and the film industry are believed to be the worst sufferers due to the evolution of this digital economy. Further, the establishment of social media networking sites have contributed into the illegal dissemination of the information which

40 *Supra* note 8 at p. 6.

41 *Id.* at p.34.

42 ECONSTOR.EY, <https://www.econstor.eu/bitstream/10419/140528/1/v31-i01-a04-BF02930250.pdf> (last visited June 22, 2022) p.22.

43 *Supra* note 31 at p.3.

44 Nguyen Khanh Doanh and Yoon Hoo, *Impacts of Intellectual Property Rights on Trade Flows in ASEAN Countries*, 14 Journal of International and Area Studies 1, 3 (2007).

45 *Id.* at p.3.

46 ITU.INT, <https://www.itu.int/net/itunews/issues/2011/07/38.aspx> (last visited June 23, 2022).

makes the copyright right of a right holder vulnerable. As per the 2019 International Federation of the Phonographic Industry (IFPI) - Indian Music Industry (IMI) 'Digital Music Study', "the music industry is estimated to lose about Rs. 1,000 crore a year due to piracy which makes up for 67% of the market which is much higher than the global piracy average of 27%".⁴⁷ Likewise, "the Korean Film Council estimates that 50 per cent of households in the Republic of Korea have illegally downloaded films, representing a loss to the industry, particularly the DVD market, of perhaps USD 1 billion".⁴⁸ On the contrary lines, it is interesting to note that there are some theoretical and empirical work which has referred that there exist possibilities wherein right holder may gain from unauthorized copying. This can happen in a situation when the unauthorized copies are not the perfect substitutes of the authorized one from right holders, it will then push better-informed users to obtain high-value works.⁴⁹ However, there are not much existing literature in this aspect and could be an interesting dimension for future research. The other positive feature highlighted by Richard A. Posner is that as the cost of dissemination of IP has decreased, it has resulted in bringing global market closer to the producers of creative work, "the social value of a work that involved a heavy upfront investment, which is the defining characteristic of IP, increases because the incremental cost of providing the work to additional customers is so slight".⁵⁰ However, still the loss suffered by the right holders can be said to be greater.

During the earlier times, an infringer while committing the act of infringement had to bear certain replication costs and even the duplicate copy's quality would deteriorate. However, digital world has made it possible to produce the exact copy of the work at zero expense while the quality of the work is maintained. The changes ushered in the field of IP law due to the advent of technology that we have witnessed in the IP regime have resulted into the shift of "economics of controlling, reproducing, allocating and publishing information".⁵¹ There is a trio of technological advances which have played role in bringing radical shifts in the economics of information,

47 Blaise Fernandes, *View: Why combating music piracy in India is a losing battle*, THE ECONOMIC TIMES (June 04, 2020), <https://economictimes.indiatimes.com/industry/media/entertainment/view-why-combating-music-piracy-in-india-is-a-losing-battle/articleshow/76182858.cms?from=mdr>

48 *Supra* note 47.

49 *Supra* note 18 at p.66.

50 Richard A. Posner, *Intellectual Property: The Law and Economics Approach*, 19 Journal of Economic Perspectives 57, 72 (2005).

51 Asif Khan and Ximei Wu, *Impact of Digital Economy on Intellectual Property Law*, 13 Journal of Politics and Law 117, 118 (2020).

these are:⁵² economics of reproductions have been changed due to information in digital form; economics of distribution have changes due to computer networks; and, economics of publication have been changed due to World Wide Web. Amidst the ongoing technological revolution, the differences in generation of revenues have also been noted. The shift in the source of revenue is in the manner, for example, that now the revenue source can range from non-allowance of access of the content without payment (called 'paywall') to complete availability of the content without cost where the revenue is generated from sources like advertisements.⁵³

As it can be understood that in the digital environment, due to piracy it becomes difficult for the right holders to recoup the cost and hence, it could be inferred that it might lead to decline in the creation of new work. The right holders would not be able to be benefitted aptly owing to the piracy as their revenue generated from the work would decrease. However, it is interesting to note that in accordance to the empirical study conducted, "the number of new musical recordings, films and books has increased rapidly over much of the last decade in spite of concern with more unauthorized copying".⁵⁴

In respect to the increasing creation of user-generated content, Christian Handke has raised a plausible question, that as these contents are mostly created with no intent to generate monetary benefits from and make it available for the public on the social media platform. In such instance, "is it efficient to apply copyrights when pecuniary incentives play little role in incentivizing creativity?".⁵⁵ This is the dimension which is required to be explored by the scholars. Further, there are serious challenges posed to the incentive paradigm by the informational landscape which includes "mass production of knowledge and information bypassing IPR or making a subversive use of them, such as 'Open Content', 'Access to Knowledge', 'Open Source' and 'Free Culture'".⁵⁶

In the digital environment, there are certain challenges which is brought in respect to referring information as a public good. As discussed earlier, one of the economic concepts of IP law is that the information is non-excludable, hence, there is need to create a legal right allowing the right holder to be able to exclude the work. The digital networks which are enabling "colossal distribution of copies, also enable electronic monitoring, by automated crawlers, file trackers and central monitoring systems located at different junctions of the communication infrastructure".⁵⁷ For example, content ID

⁵² *Id.* at p.119.

⁵³ OECD, <https://www.oecd.org/sti/ieconomy/KBC2-IP.Final.pdf> (last visited June 27, 2022) p.227.

⁵⁴ *Supra* note 18 at p.66.

⁵⁵ *Id.* at p.76.

⁵⁶ *Supra* note 5 at p.58.

⁵⁷ *Id.* at p.191.

provided by YouTube upon upload of content. The digital technology has also empowered the right holders to exercise control over their work by turning them into excludable like a post purchase regulation, for example, Adobe PDF which makes it possible for the distributor to be able to prohibit uses of certain nature like printing etc., this would ensure that no free-riders are benefiting in the process.

The new technical manner of exclusion of information goods via digital rights management (DRM) systems and regulation of digital networks through licensing and contract are leading to obscuring “the boundaries between public and private ordering, and are challenging some of the fundamental tenets of the economic analysis of intellectual property”.⁵⁸ This high-priced policing of copyright infringement will transpire and “seek enforcement of rights via private means and public courts to restore the original trade-off intended by the copyright system”.⁵⁹ The encryption technology which are developed have the potential to drastically restrict the number of copies being available to the public and also, facilitate the keep track on the usage of files which are downloaded from the internet. This would result into imbalance in a way that “diffusion is strictly controlled by the copyright owner, with the result that deadweight loss increases in line with its monopoly power”.⁶⁰ The question is raised that whether economics trade-offs witness substantial modification in the digital era. Though there are no changes in the existing model but as seen there is definitely changes in the manner of creation of the content, exploitation of such content and the process of administering the copyright. From an economic stance, DRMs are considered to be specifically notable as it able to convert information which is referred as a non-excludable resource into an excludable property, “and they extend the time span of excludability and control, long after the informational product was purchased by a consumer”.⁶¹

According to the empirical evidence, the enforcement measures applied by the right holders in the form of DRM or pursuing the IPR infringers does not prove to be effective.⁶² Additionally, the fact should not be ignored that these technologies can be circumvented. It has been argued that the ‘anti-circumvention’ legislations formulated by the nations that prohibits from developing technological tools assisting to circumvent the digital protection provided to information products and services, will lead to the expansion of

58 *Supra* note 5 at p.7.

59 *Supra* note 4 at p.6.

60 Francois Leveque And Yann Meniere, *The Economics Of Patents And Copyright*, 78 (Monograph, Berkeley Electronic Press 2005).

61 *Supra* note 5 at p.183.

62 *Supra* note 18 at p.68.

IP protection. In addition to this, it will result into limiting the access of the content to particular users of products or platforms only.

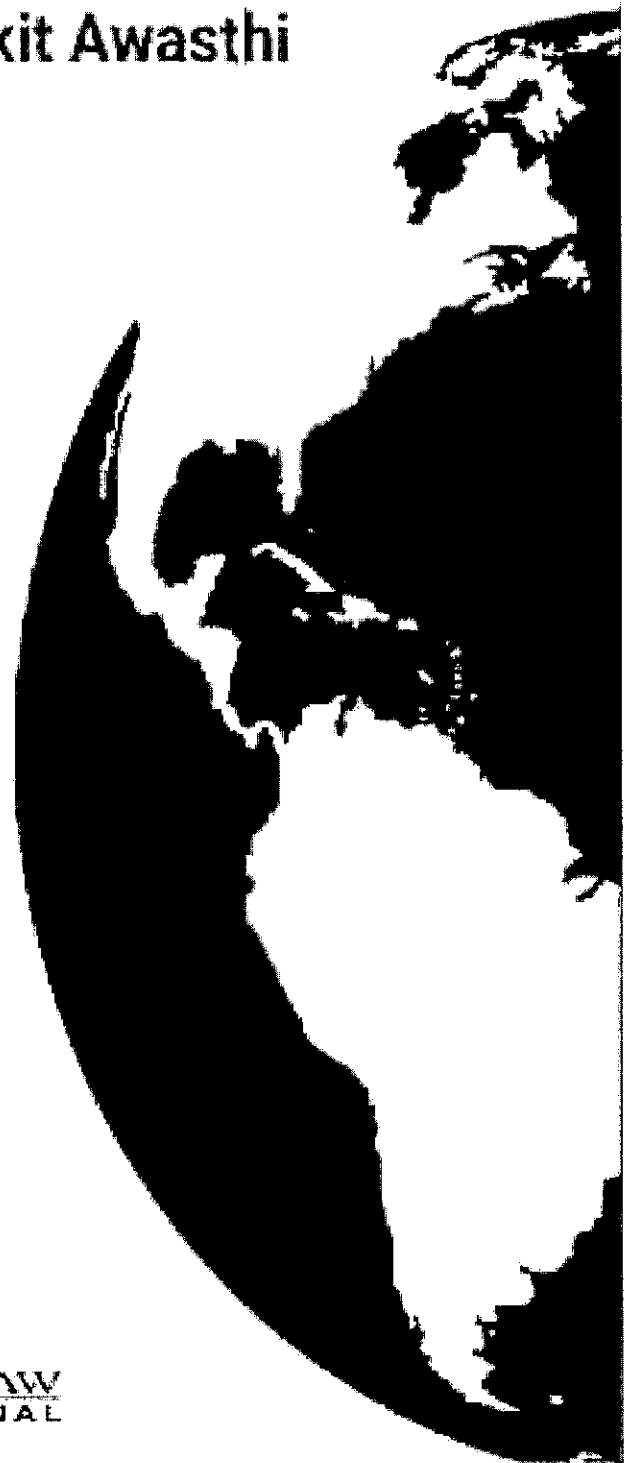
5. CONCLUSION

It is essential to explore the economics of the subject which will facilitate to improvise public policy and will help in bringing appreciated reform in IP law so as to make it align with the development taking place in the present era. From the above discussion, it can be *prima facie* understood that while pursuing economic analysis of IP there is an urgent need to inculcate the advancement of technology and its consequence. This will help in creating a plausible theoretical framework for policy making in the future. Since the inception of digital technology, it has been made easy to copy IP protected work and disseminate it, and simultaneously, it has formulated mechanisms assisting the right holders in keeping a check on the usage of their work. This is calling for a reconsideration of the existing economic analysis of IP laws. Hence, policy makers, scholars, and stakeholders should derive new theories of the economics of IP law based on the economic literature accommodating contemporary development in the IP regime.

GLOBALIZATION LAW AND COMMUNITY

**Dr. Ayan Hazra
Dr. Ankit Awasthi**

**SATYAM LAW
INTERNATIONAL**



ABOUT THE BOOK

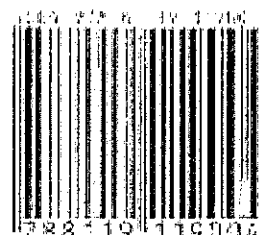
This study of legal globalization has been carried out over the last two decades, with a wide range of academically informed theories and findings on global national legal domains and ordering. Despite the complexities of legal modernism and the -pillory- effects of legal shift and mobilisations, there have been no checks against these theoretical globalising ambitions. For example, the current rise of populism in Europe and the United States is putting pressure on what we refer to as the "global" over's policies and institutions. Similarly, China's (and, increasingly other rising countries) rise in prominence is calling into question the United States' status as an unchallenged hegemon in geopolitical, economic, social, and legal transnational processes. What do we perceive when we examine legal globalization as a multipolar movement, in which legal revolutions, social transformation, and political situations are not simply determined by creation and opposition from the top down or from the bottom up? In other terms, when we study the indeed invisible phenomena of legal globalization, what do we see?

In this background the present edited book is an attempt to produce a comprehensive literature on various facets of globalization.

ABOUT THE EDITORS

Dr. Ayon Hazari Assistant Professor Sociology, Doctorate in Tribal Development and Women Empowerment, has about 11 years of experience in teaching, research and evaluation. Prior to joining UNLU, he has worked with International Rice Research Institute (IRRI), Philippines as a Social Scientist. Further also worked ICHD at KUMILU. Recipient of State Scholarship- West Bengal, for Ph.D research. His research interests centers on Social Development issues such as Tribal livelihoods, Education, Displacement, Rehabilitation, Environment and Gender.

Dr. Ankit Awasthi Assistant Professor of Law Dr. Ankit Awasthi is currently Assistant Professor of Law at Hidayatullah National Law University, Allah Nagar, Raipur. He is Faculty Advisor of Kalyan Society of UNLU, a chapter established under Vidhi Center for Legal Policy. He is Faculty Coordinator of Alumni Council. He is also member of Digital India team & other committees of the university. He teaches International Trade Law, Legal Method, Media & Law and Professional Ethics, General Principles of Corporate Law and Law & Justice in Globalizing World. His area of research includes Institutional Reforms in the field of Corporate Governance. Dr. Awasthi is having more than 8 years of teaching and research experience.



**SAIYAM LAW
INTERNATIONAL**

Price : Rs. 295.00
\$ 20.00

CHAPTER 3

**IP Dispute Resolution
with Increased Globalisation**

Ms. Ambika Aggarwal*
Prof. (Dr.) Anindya Sirca#

ABSTRACT

IP as a business asset is exploited maximally, protected ferociously and guarded protectively. If there is sufficient load of IP litigation and adequate resources to run an SIPJ, then it is in domestic interest that special IP benches in commercial courts or specialised IP tribunals be set up. However, the efficacy of these systems is not a truism across the board. The experience with IPAB shows that SIPJs are not immune from systemic failures. While an increase in the number of SIPJs signals towards the globalised ambition with which IP is now being viewed, they don't necessarily solve the problem of globalised infringements with absolute certainty. ADR forums provide globalised businesses with a fast means to resolve differences without causing business animosity. They offer opportunities for neutral, confidential, final and internationally enforceable dispute settlements. ADR methods within or in connection to SIPJs together have the potential to create a strong IP enforcement mechanism. This is essential for development of a capable IP ecosystem, keeping in view the need of emerging globalised IP markets.

Key Words: dispute resolution, globalisation, SIPJs, ADR, IP enforcement.

I. INTRODUCTION: IMPACT OF GLOBALISATION ON IP

Innovation, investment, production, communication, transportation – the archetypes of globalisation have established a new era of world trade interlinked with multi-level value chains and driven by intensely robust trade highways. This has not only opened up national boundaries, it has fundamentally catered to obsessions bent on disrupting traditional markets. Aggressive market

* Research Assistant, DPIIT-IPR Chair, NALSAR University of Law, Hyderabad

DPIIT Chair Professor, NALSAR University of Law, Hyderabad

dominance tools in the global digital economy are surpassing traditional brick-and-mortar arbitrage. Both, the nature and types of trade have evolved. With this, the ephemeral character of intellectual property (IP) has traversed into cross-border services, generating economic value with such success that business models of new age companies in Industry 4.0 are based solely on intangibles.

The progression of technology and change in market dynamics has resulted in collaboration between curious assemblages of businesses. For instance, with expansion of the internet to IoT applications, tech-intensive companies harnessing big-data are displacing established medico-research outfits as generators of a surplus of global investment in health and wellness sector. The change is visible, on one hand, in contributions of companies like Samsung and Apple in manufacture of 'health-tech' devices like wearable fitness trackers, and on the other hand, in major acquisitions of digital health start-ups by big-pharma. IP, which is at the core of these developments, has seen a boost in its generation across all its sub-domains, ranging from source codes and product designs to patents and integrated circuit layouts.

Technology transfer is moving horizontally and vertically; and the latter has, on a larger scale, fuelled cross-border technological diffusion. The stress is now on commercialisation via inter-domain joint ventures and partnerships. IP licensing is contributing to higher production in developing economies, leading to a better return on investments for small and medium enterprises (SMEs) and has, in the recent past, become a good tool to attract more foreign direct investment (FDI) projects. Elaborate systems are now in place for strategizing IP management – a topic steadfastly gaining more space in discussions in corporations and litigation alike.

Needless to say, IP as a business asset is exploited maximally, protected ferociously and guarded protectively. The unquestionable importance of IP in the globalised world is reflected in the seriousness with which IP clauses are drafted in bi- and multi-lateral trade agreements and the vigour with which they are enforced in adjudication forums. At the base of protection of all intellectual products: works, patents, marks, designs etc. is the potential for commercial exploitation. The zeal to exercise legally-granted limited monopoly is justified on the ground of insuring returns on investments. Thus, IP disputes are now commonplace and often involve critically high-stakes.

Moreover, growth in international transactions has multiplied the potential for cross-border IP disputes. *“Global challenges – such as the digital environment, climate change issues, access to health care, the protection of traditional knowledge and traditional cultural expressions and the preservation of biodiversity – may create new types of IP disputes. Meanwhile, the economic*

*downturn is providing an incentive for stakeholders to seek more efficient and affordable means of resolving such disputes than through court litigation*¹ – making ADR an increasingly attractive option.

The methods of dispute resolution, however, do not seem to be in consonance with the requirements of this field of law. Lethargic court proceedings across jurisdictions function in ignorance of expert knowhow and time-bound constraints that are often critical in predicting the potential success of IP exploitation. This has been conceded to by the courts themselves.² Perhaps some other system would be more compliant? We find the answer first, in specialised intellectual property rights jurisdictions (SIPJs) and second, in promotion of Alternate Dispute Resolution (ADR) procedures.

This study delves into prevalent dispute settlement mechanisms and their ingrained character that has yet to catch up with the accelerated speed of IP development. The research objective is to highlight that though SIPJs are being widely adopted, the efficacy of these systems is not a truism across the board. Rather this depends on careful policy drafting and planning, as is evident from India's experience with the establishment and subsequent scrapping of IPAB. Finally, we shall discuss the policy surge behind ADR in application to IP law and current pro-ADR international efforts. We will conclude with practical recommendations for the IP industry, judiciary and ADR professionals to enhance IP dispute resolution with increased globalisation.

II. SPECIALISED INTELLECTUAL PROPERTY JURISDICTIONS (SIPJS)

The economic complexities of new-age technological developments has lent weight to the legal significance of specialised intellectual property jurisdictions (SIPJs). Jacques de Werra has defined it as, *“an independent public judicial body which has the primary mission to adjudicate certain types of disputes relating to intellectual property rights at the national or regional level, whereby such court can also be charged with the adjudication of other types of disputes beyond IP disputes.”*³ According to an oft-cited report of the

1 Sarah Theurich, Efficient Alternative Dispute Resolution in Intellectual Property, WIPO Magazine (June, 2009) https://www.wipo.int/wipo_magazine/en/2009/03/article_0008.html.

2 See International Confederation of Societies of Authors & Composers (ICSAC) v. Aditya Pandey, (2017) 11 SCC 437 (*“However, while saying so I would like to take note of two disturbing trends which have emerged from the facts of the present cases. The suits, by now, are over 10 years old; yet, there has been no substantial progress therein. Parties to the suits seem to have lost all interest in prosecuting the same...”*)

3 Jacques de Werra, *Specialised Intellectual Property Courts- Issues and Challenges*, CEIPI-ICTSD (March, 2016) https://ictsd.iisd.org/sites/default/files/research/Specialised%20Intellectual%20Property%20Courts%20-%20Issues%20and%20Challenges_0.pdf.

International Chamber of Commerce, “*Although created in the context of diverse legal, economic, cultural and historical frameworks, SIPJs have often been established in different countries for similar reasons—to increase judicial specialisation in IP-related issues, promote consistency and predictability in trials and case outcomes, and reduce the risk of judicial error—even if with local nuances.*”⁴

SIPJs signal a seriousness towards creating specialised jurisprudence. The underlying policy objectives usually include the need to provide a venue for professionals across the field - to work in a dedicated forum, keep abreast of all sectoral developments and increase the general level of expertise. This also contributes to an increased predictability in judicial outcomes. Along with efficacy in dispute settlement, these forums become a venue of informal peer training and promotion of IP awareness. Specialised forums provide convenience in accessibility to those aggrieved. On a macro scale, they are often seen as accreditations of domestic conformity to international IP treaties’ requirements.

At least in theory, the benefits of establishing SIPJs seem pressing and worthy. Practically, however, this type of implementation is riddled with roadblocks. Several policy decisions need to be taken to justify the expenditure that will be incurred in making SIPJs. This includes deliberation on whether it will involve new types of courts or tribunals or special divisions within existing courts; will jurisdictions be exclusive, original or appellate; how will the need for expert consultations be satisfied; will the SIPJ follow the *lex loci* procedural codes or develop its own rules, and so on.

A. SIPJS AS A WORLDWIDE TREND

Several jurisdictions have adopted the SIPJ model in one form or the other. China sees a strong domestic IPR protection mechanism as integral to promotion of economic competition. This is made evident by a surge in establishment and approval of IP tribunals by the Supreme People’s Court in around 18 cities along with a national level appeal mechanism.⁵ In UK, the Intellectual Property Enterprise Court (IPEC) as part of the ‘Business and Property Courts’, “*aims to provide a procedure for intellectual property litigation which is speedier and less costly than is the case in the rest of the High Court... The intention is to ensure that parties without the benefit of*

⁴ International Chamber of Commerce, *Adjudicating Intellectual Property Disputes: An ICC Report on Specialised IP Jurisdictions Worldwide*, ICC (April, 2016) <https://iccwbo.org/content/uploads/sites/3/2016/04/ICC-report-on-Specialised-IP-Jurisdictions.pdf>.

⁵ See, Justice Tao Kaiyuan, China’s commitment to strengthening IP judicial protection and creating a bright future for IP rights, WIPO Magazine (June, 2019) https://www.wipo.int/wipo_magazine/en/2019/03/article_0004.html.

*large financial resources are not deterred from seeking access to justice because of the high cost of litigation.”*⁶

The EU has recognised, *“One way of addressing the challenges is to set up specialised IP rights jurisdictions (SIPRJs), in order to resolve IPR-related disputes more efficiently, faster, with better quality, higher consistency and more predictability of outcomes in the eyes of the system’s stakeholders.”*⁷

The Agreement on a Unified Patent Court (UPC) has become provisionally applicable from January 19, 2022. It is expected to start functioning by the end of 2022 or early 2023. The Court will be comprised of a *“Court of First Instance, a Court of Appeal and a Registry”* and will exercise exclusive jurisdiction over *“European patents with unitary effect.”*⁸

However, transplanting specialised jurisdictions as a response to other nations’ practices without conducting a feasibility analysis can backfire. The American *“Court of Appeals for the Federal Circuit”* (CAFC) was chosen as a model for the Japanese *“Intellectual Property High Court”* (IPHC). The IPHC’s working model then had to be moderated to suit domestic soft-law requirements - a key change being appointments of judges as technical experts remunerated by the court’s own funds; in contrast to the privately acquired and paid expert witnesses as in the US. In South Korea, initial specialist IP adjudication was under the sole control of IP offices. Subsequently, it *“recast the function of the court to be much closer to the IPHC and to a more traditional understanding of a ‘court’ more generally, introducing technical advisors for cases that are exceptional in terms of their technical difficulty rather than the more general usage in the Japanese context.”*⁹

It is also a fallacy to believe that direct transplantations from developed to developing nations will be beneficial for the latter. The first, and rather obvious, difference pertains to IP frameworks and scope of protections, which are often dictated by a country’s economic proliferation. The impact of economic globalisation is felt differently and distinctly by each country. This affects their response to IP enforcement, which can range anywhere on the scale from trade liberalisation to trade protectionism. Further, differences are visible among developed jurisdictions themselves. Where Germany supports

6 Chancellor of the High Court, *The Intellectual Property Enterprise Court Guide*, HM Courts & Tribunals Service (July, 2019) https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/823201/intellectual-property-enterprise-guide.pdf.

7 EUIPO, *Specialised IP Rights Jurisdictions in the Member States A compilation of available studies (Q3 2017)*, (July, 2018) https://euipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/reports/2018_Specialised_IP_Rights_Jurisdictions_in_Member_States/2018_Specialised_IP_Rights_Jurisdictions_in_Member_States_EN.pdf.

8 THE UNIFIED PATENT COURT, <https://www.unified-patent-court.org/> (last visited June 26, 2022).

9 David Tilt, *Comparative Perspectives on Specialised Intellectual Property Courts: Understanding Japan’s Intellectual Property High Court through the Lens of US Federal Circuit*, 16 ASIAN J. COMP. LAW 238-258, 243 (2021).

IP protection as a mandate of administrative wings, this is clearly not the case in the rest of the EU. Notably, in India, the SIPJ was shifted from the administrative to the judicial wing.¹⁰

The third critical reason is overestimation of the effectiveness of Western IP tribunals. Take for instance, the report of the European Court of Auditors conducted in April, 2022.¹¹ On the issue of IP enforcement, the Auditors note, “*We found several weaknesses regarding the non or partial conformity of IPRED transposition in the audited Member States. This situation of continuing delays constitutes weaknesses that have led to a divergence of IP protection...*”¹² The Report concludes that there is a need to “*Complete and update the EU IPR regulatory frameworks.*”¹³

B. COST-BENEFIT ANALYSIS

The illustrations above offer only a handful of examples. The trend of setting up SIPJs has caught on in many other countries in South America and Eastern Europe. The necessity of such courts in all jurisdictions, however, is not the same. Advanced IP jurisdictions like Japan and South Korea have been careful to modify their IP systems whenever they have adopted Western practices; while in the West, jurisdiction like EU and UK have been conscious of upgrading their IP dispute settlement machinery from time to time in response to changing needs.

The primary factors to be taken into account while conducting a cost-benefit analysis for creating specialised courts or special benches within general courts are case load, regional distribution, resource availability and scope of capital investment. Since the TRIPS Agreement, 1995 does not prescribe any specific method of dispute resolution, new tribunals should only be established if there is a significant burden of intellectual property litigation on the existing judicial machinery. The next step should be to undertake an assessment of the regional distribution of cases. If a majority of the cases are geographically restricted, this will help determine if a few new tribunals can suffice. If the cases are geographically diverse, then this will entail setting multiple new commercial court benches.

An important determinant in success of these new avenues is existing manpower. Each new dispute resolution venue will require specialised judges and allied enforcement personnel. This in turn requires regular

¹⁰ See *infra* part III.

¹¹ EU Special Report 06/2022, *EU intellectual property rights: Protection not fully waterproof*, European Court of Auditors (April 26, 2022) https://www.eca.europa.eu/Lists/ECADocuments/SR22_06/SR_EU-IPR_EN.pdf.

¹² *Id.*, at 31.

¹³ *Id.*, at 37.

capital investments for acquiring judges and experts, and then continued investments in periodically training them. Concerted efforts will have to be made in making new rules and procedures; whilst also ensuring that over-specialisation does not dictate concentration of power and threaten diversity of judicial opinions.

If any of the above factors are too difficult to satisfy, then the SIPJ venture may not be fruitful. The next section notes how despite the presence of all the necessary factors, lack of executive will and bureaucratic mismanagement, which is quite often endemic in developing nations, can also become a cause for failure of SIPJs.

III. THE INDIAN EXPERIMENT

The Intellectual Property Appellate Board (IPAB) was established by DIPP under the Trademarks Act, 1999 and in furtherance of Article 323B of the Indian Constitution, 1950. It became India's centralised IP dispute resolution forum in September, 2003. The motivation behind this new setup was to "*influence the inflows of FDI, technology transfers and trade that may have a bearing on the growth of country*" and "*certainly directly contribute to the growth of a stronger IPR regime and indirectly in the growth of economic development.*"¹⁴ Unfortunately, the ambition and anticipation with which the IPAB was established was quick to wane.

The *modus operandi* to expedite decision-making and incorporate expert deliberations was soon frustrated by non-appointments to key posts, delay, duplicity with courts' original jurisdictions, a controversial hierarchical structure, access restricted to two adjudication centres and periods of suspension of operations. Criticism was voiced across the board from the bar & bench to academia and later also from sectors of industry and policy.

Justice (Retd.) Prabha Sridevan, who served as IPAB's Chairperson from 2011 to 2013 was critical of the Board's lack of independence, "*dilute(d) judicial character*"¹⁵ and "*government's failure to conduct a 'judicial impact assessment' to assess resources required by the IPAB, inadequacy of staff, absence of pay parity for the staff and insufficient infrastructure.*"¹⁶ The selection and composition of the IPAB was in contravention of important

¹⁴ Department for Promotion of Industry and Internal Trade, *Scheme for Strengthening of Intellectual Property Appellate Board (IPAB)*, MoCI, GoI, <https://dpiit.gov.in/programmes-and-schemes/intellectual-property-rights/scheme-strengthening-intellectual-propertyappellate-board-ipab>.

¹⁵ Prabha Sridevan, *Who's Tribunal is it Anyway?* The Hindu (June 4, 2016) <https://www.thehindu.com/opinion/op-ed/whose-tribunal-is-it-anyway/article5351733.ece>.

¹⁶ *Ibid.*

precedents like *L. Chandra Kumar*¹⁷ and *R. Gandhi*¹⁸. This was first brought to judicial notice in *Sanjeev Kumar Chaswal v. Union of India*¹⁹ and subsequently in *Smt. Ammini Karnan v. IPAB*.²⁰

Though the relevant state machinery had been given repeated notice of systemic deformities, it was slow to react. Structural reforms were initiated only after court directions were issued in the case of *Shamnad Basheer v. Union of India*²¹ where a grave challenge was made on the constitutional validity of IPAB's presiding quorum. The Plaintiff, Prof. Basheer, alleged that executive interference and control over appointments to key posts of the Board was a violation of the constitutional basic structure doctrine. The Court concurred and struck down the provisions that had mandated appointments of civil servants to judicial posts on grounds of being affront to doctrine of separation of powers and judicial independence. Also the constitution of committee for appointment of members, both for Vice-Chairman, Judicial Members and Technical Members was declared as contrary to basic structure of the Constitution.

Thereafter, in May, 2020 Rahul Bajaj and Prashant Reddy submitted a petition to the then acting Minister of Commerce, proposing to restore appellate IP cases to Commercial Courts and High Courts, thereby altogether discarding the IPAB.²² The Controller General of Patents, Designs & Trademark was in agreement with the drawbacks noted in said proposal. The Controller General's office was in specific agreement with lack of technical expertise in the IPAB, circumvention of its jurisdiction to High Courts and potential misuse in forum-shopping. The Office admitted that shifting IPAB's functions to commercial courts would be beneficial for IP jurisprudence.

A particularly conspicuous factor in IPAB's functioning, one that brought pharmaceutical sector's quieter lobbies into visible public debate, was concentration of power in the hands of the Chairperson. When the tenure of Justice (Retd.) Manmohan Singh was nearing its end, the International Association for Protection of Intellectual Property (AIPPI) approached the Supreme Court to extend it for a second time. The Apex Court did as much by using its powers of extraordinary jurisdiction. Since AIPPI's lawyers were active litigators at the Board, this raised questions of propriety and ethics.²³ This

17 AIR 1997 SC 1125.

18 (2010) 11 SCC 1.

19 2012 (132) DRJ 609.

20 2013 (55) PTC 362 (Mad).

21 AIR 2015 Mad 250.

22 See Prashant Reddy, *A Petition to Shutdown the IPAB and Shift Its Functions to High Courts and Commercial Courts*, SpicyIP (May 7, 2020) <https://spicyip.com/2020/05/a-petition-to-shutdown-the-ipab-and-shift-its-functions-to-high-courts-and-commercial-courts.html>.

23 See Prashant Reddy, *As Justice Manmohan Singh Gets Another 6 Months on IPAB, an Ethical Quandary for the Lawyers of AIPPI*, SpicyIP (March 4, 2020) <https://spicyip.com/2020/03/as-justice-manmohan-singh-gets-another-6-months-on-the-ipab-an-ethical-quandary-for-the-lawyers-of-aippi.html>.

was met with an intervention by the Indian Drug Manufacturers Association (IDMA). In what has been conjectured a heated face-off between the generics industry and big-pharma, Ravindra Bhat, J. ruled in favour of IDMA and held that “*The arguments advanced on behalf of the applicant that the incumbent chairperson continued to remain in office in view of the declaration of law by Rojer Mathew, was insubstantial and cannot be countenanced.*”²⁴

On April 4, 2020, the IPAB was abolished *vide* “*The Tribunals Reforms (Rationalisation and Conditions of Service) Ordinance, 2021.*”²⁵ This resumed the two-tier hierarchy of dispute resolution. References to ‘tribunal’ in concerned Acts were amended to “Commercial Courts” and “High Courts” and pending appeals returned to their original state jurisdictions. The Delhi High Court was the first to respond by setting up an Intellectual Property Division in July, 2021.²⁶ A quorum of circulating judges has been tasked to dispose approximately 3000 transferred cases in addition to receiving appeals and fresh suits, other than those under jurisdiction of the Division Benches.

“*The Intellectual Property Rights Division Rules, 2021*” notably provide for hot-tubbing to record expert testimony, hiring of law researchers and relevant experts for techno-legal input, restricted time slot for filing written statements and oral arguments, several steps to promote forum accessibility for persons with disabilities. Pursuant to the constitutional power to draft its own rules, the Delhi HC has also notified “*the High Court of Delhi Rules Governing Patent Suits, 2022.*”²⁷ The objective here is to deal with various types of patent suits relating to new and complex sciences with ease and knowledge through reference to a comprehensive document. The Rules, 2022 define various types of briefs, expected contents of written pleadings and evidences required, structure of case management hearings, scope for mediation and redaction of confidential information and a dedicated panel of advisors. Other HCs are yet to follow suit.

IV. LESSONS LEARNED

All of the studies emphasise that specialisation is recommended only in jurisdictions, which presents a certain set of economic, societal and

24 The International Association for Protection of Intellectual Property (India Group) v. UOI, (2021) 4 SCC 519.

25 The Tribunals Reforms (Rationalisation and Conditions of Service) Ordinance, No.2, Acts of Parliament, 2021 (India).

26 Press Release, *Creation of Intellectual Property Division in the Delhi High Court*, High Court of Delhi, pressreleaseipddelhi-hclivelaw-396202.pdf.

27 Notification, *High Court of Delhi governing Patent Suits, 2022*, High Court of Delhi (Feb. 24, 2022) https://delhihighcourt.nic.in/writereaddata/upload/Notification/NotificationFile_WPGZPIF1R3R.PDF.

institutional prerequisites.²⁸ As our study notes above, the diversity of legal philosophy and judicial structures firmly precludes the adoption of a one-size-fits-all policy.

SIPJs are not free from error. Two main drawbacks have been commonly noted. First, there is *“a risk in fostering a judicial ‘tunnel vision’ or of losing sight of how IP rights law fits into the larger legal framework.”*²⁹ Hong Xue, contributing to a CEIPI-ICTSD Report states, *“Specialisation is part of a tendency to strengthen intellectual property protection and enforcement, a progression that is unlikely to ensure a more balanced intellectual property system, since judges of these courts could overemphasise the exclusiveness of intellectual property rights.”*³⁰ Secondly, the experience with IPAB shows that they are not immune from systemic failures. SIPJs succumb to inactivity if there is a lack of trained experts and judges. If the case load is more and adjudicating benches few and far between, then the SIPJ setup can paradoxically become a hindrance in access to justice.

While globalisation has marked the cross-border movement of IP-related goods and services, the same cannot be said for IP philosophies and laws. The North-South divide still highlights the foundation of international intellectual property law. Domestic IP legislations continue to be fragmented and dissonance is visible on the most basic of rights. The Western conception of the scope of copyright does not always match that of the East. Some countries provide inventors the right of remuneration as a *bona fide* right in patent statutes while others leave them subject to employer-employee contracts.

Globalisation combined with digital services creates situations where IP infringements happen in seemingly unrelated jurisdictions. This is not analogous to IP's erstwhile experience with movement of pirated goods and physical grey markets. Unlike dependence on customs laws, these situations give rise to application of one national court's orders simultaneously on other nations. While comity of nations intervenes in good faith, this is bound to give rise to conflict of laws issues. Such proceedings can often get entwined with procedural encumbrances such as evidence collection, dealing with foreign witnesses, enforcement and recognition of foreign decisions in the home state.

28 *Supra* note 11.

29 *Supra* note 11.

30 *Supra* note 3.

The same facts argued on the same cause of action can bear different results in different IP courts. The *Equustek I*³¹ and *Equustek II*³² cases are instructive on this point. The British Columbia Court in Canada found Datalink Technologies Gateway LLC guilty of patent infringement and misappropriation of trade secrets of Equustek Solution Inc. This court's order was confirmed by the Canadian Supreme Court, who *inter alia* required Google to de-link all of Datalink's websites and search results from global servers. Google complied in Canada, but not in US. In *Equustek II*, it was successful in obtaining an injunction from the District Court in the Northern District of California. The California court held that the Canadian order violated S. 230 of the Communication Decency Act, 1996³³ and thus undermined public interest in free speech on the internet. This was primarily because Canadian law considers Google as a 'publisher' and US law does not.

V. ALTERNATE DISPUTE RESOLUTION METHODS

While an increase in the number of SIPJs signals towards the globalised ambition with which IP is now being viewed, they don't necessarily solve the problem of globalised infringements with absolute certainty. IP litigants have to bear costs in multiple courts. Even then, victory in one jurisdiction does not guarantee enforcement in another. Such additional economic costs are a heavier burden on small and medium scale industries; while time lost in adjudication processes is a detriment for all. The "*EU Report on the Cross Border Enforcement of Intellectual Property Rights (2021)*" sums up the issue, "*Despite the proliferation of infringing activities occurring online, developing adequate countermeasures has proven a longstanding challenge for policymakers. This is primarily due to the fact that in the existing international framework the recognition and enforcement of IPRs remains largely territorial.*"³⁴ In spite of developed market harmonisation, "*cross-border enforcement in EU is rare phenomenon.*"³⁵

This is where methods of alternate dispute resolution can be beneficial. The emphasis on ADR methods, hence, becomes more pressing when seen in the context of globalisation. They provide a vast ground for the disputing parties to tailor adjudicatory process as per their own needs. This can range from not wanting substantive determinations on merits of

31 Google Inc., v. Equustek Solutions Inc., [2017] 1 S.C.R. 34 (Can.).

32 Google LLC v. Equustek Solutions Inc., 2017 WL 5000834 (N.D. Cal. Nov. 2, 2017) (US).

33 The Communication Decency Act, 47 U.S.C. § 230 (1996) (US).

34 EU Directorate-General for Internal Policies, *Cross Border Enforcement of Intellectual Property Rights in EU*, EUROPEAN PARLIAMENT (Dec. 16, 2021) [https://www.europarl.europa.eu/thinktank/en/document/IPOL_STU\(2021\)703387](https://www.europarl.europa.eu/thinktank/en/document/IPOL_STU(2021)703387).

35 *Id.* at 13.

the case, as in mediation; to detailed independent, impartial and expert determinations, as in arbitration. Such leeway can cater specifically to complex IP disputes.

A. ADR AS THE NEW IP TREND

Policy push in the international IP scene shows that ADR has indeed not been ignored. WIPO Arbitration and Mediation Centre set up in 1996 offers procedural assistance through ADR Good Offices, eADR tools, selection and appointment from thousands of ‘WIPO Neutrals’ who are ADR professionals specialised in FRAND/SEP, life sciences and technology matters. The WIPO ADR Rules, 2021 can be availed through contracts and provide a range of flexibilities incorporating interim and emergency measures. The wing is also collaborating with national courts, for instance, since 2017 to provide ADR services for international IP and technology disputes in China. A Patent Mediation & Arbitration Centre has been provided as per Article 35 of the Agreement on UPC. Parties can be subjected by the UPC to ADR at any stage of the patent dispute.

In national laws arbitration or mediation requires a contractual obligation, either in the form of an arbitration clause or a subsequent submission agreement, to come into effect. In some domestic court proceedings, referring the parties to ADR during litigation is a norm. Some IPOs like in the UK also offer ADR services. ADR Pledges have become common business and government tools where parties voluntarily agree to explore all possible dispute resolution options before resorting to litigation. Examples include CPR’s 21st Century Corporate ADR Pledge³⁶, WIPO Mediation Pledge³⁷, CMAP’s *La Charte de la Mediation Inter-Enterprises*³⁸, Singapore Mediation Charter.³⁹

B. COST-BENEFIT ANALYSIS

Globalisation has catalysed the collaborative nature of IP. With higher market permeation, businesses collaborations are producing new and intricate

36 CPR, 21st CENTURY CORPORATE ADR PLEDGE, https://www.cpradr.org/resource-center/adr-pledges/21st-century-pledge/index/_res/id=Attachments/index=0/21st%20Century%20Pledge%202017.pdf (last visited June 27, 2022).

37 WIPO Mediation Pledge for IP and Technology Disputes, <https://www.wipo.int/amc/en/mediation/pledge.html> (last visited June 27, 2022).

38 CMAP, *La charte de la médiation inter-entreprises*, <https://www.cmap.fr/le-cmap/les-signataires-de-la-charte/#:~:text=La%20charte%20de%20la%20m%C3%A9diation%20interentreprises&text=Il%20s%27agit%20d%27une,appropri%C3%A9e%20que%20la%20voie%20judiciaire> (last visited June 27, 2022).

39 Singapore Mediation Charter, <https://www.mediation.com.sg/wp-content/uploads/2019/09/SMC-Mediation-Charter-Form-2019.pdf> (last visited June 27, 2022).

products. IP-based disputes are becoming increasingly technical and often need heavy reliance on groups of experts. Globalised markets also mean that companies, despite these legal conflicts, are generally interested in continuing joint ventures. ADR forums provide them with a fast means to resolve differences without causing business animosity. All ADR forums provide high levels of neutrality and confidentiality. An added benefit is that companies' commercial information is not released to the public as is often the case in courtroom proceedings.

ADR removes the need of seeking redress from multiple forums for the same cause of action. These decisions are understood to have ready international application, e.g. for arbitration *via* the New York Convention, 1959. Even when state-granted IP rights do not have international effect, ADR determinations still have a binding *inter partes* effect. This certainty also extends to seat of arbitration, language, governing laws, number of arbitrators and type of dispute. Since all these elements are contractually pre-decided, this reduces potential conflict of laws issues. Technical determinations happen within the forums, time-bound standardised procedures further reduce the costs and there is increased party autonomy in the forum selection process. Given the usually short product life cycles in IP, parties benefit from the lesser time taken in ADR dispute settlement. Mediation can be undertaken multiple times until a 'win-win' compromise is reached.

One drawback is that ADR processes typically entail a lesser intense evidence collection than court trials. The onus is therefore on the parties to enter into well-drafted agreements at the right time and maintain business records properly. They also have to be diligent in selecting arbitrators and negotiators who are competent in the desired IP sub-field, facilitative and evaluative and do not have prior conflicts of interest with any party. ADR professionals play a very important role in the process with their impartiality and commitment. Power imbalances in the negotiating process can be exploited for forum-shopping in favour of the dominant party. Parties should ensure that they can bear the administrative fees and select forums accordingly. Lastly, ADR methods don't follow the doctrine of precedents; so, even when these avenues will be frequented *en masse* it won't definitively contribute to the growth of IP jurisprudence.

VI. SUMMARY

- If sufficient IP litigation and resources to run an SIPJ are present, then it is in domestic interest that special IP benches in commercial courts or specialised IP tribunals be set up.

- If the requisite conditions are not present and SIPJs are set up, then it may cause undue stress on resources and cause further lags in IP dispute resolutions. Capability of the state systems to bear recurring expenses for maintaining and recruiting experts and judges should be taken into account.
- There is no recorded evidence to show that SIPJs specifically promote innovation, however, it is clear that they contribute towards bettering the overall quality of justice and increase domestic socio-economic emphasis on IP.
- SIPJs contribute to the creation of IP jurisprudence and expertise. They signal a seriousness towards IP dispute settlement and enforcement. Precedents coming from dedicated venues give rise to efficacy, consistency, accuracy and predictability in dispute resolutions.
- There is no 'one-size-fits-all' policy for the establishment for SIPJs. Each jurisdiction should conduct an independent feasibility analysis and transplant existing SIPJ models only after making adjustments in accordance with domestic soft-law policies.
- ADR methods offer faster, neutral, flexible, confidential, final and internationally enforceable dispute settlements. The adjudicating panels consist of trained officials which saves time and cost.
- Businesses can continue working with each other post-ADR settlements.
- Parties should be cautious in selecting the correct forum and negotiators. ADR clauses should be carefully drafted when detailing types of dispute and methods of dispute settlement. ADR professionals should be impartial, independent and specialised.

VII. CONCLUSION

Jacques de Werra has rightly opined, *"The legitimacy and necessity of establishing specialised IP courts must be assessed in a broader context which takes into account the entire IP dispute resolution ecosystem, in which ADR mechanisms cannot be ignored."*⁴⁰ Presence of ADR methods along with SIPJs is a demand of new and upcoming markets. ADRs, by and large, function as private forums that allow parties an avenue for out-of-court settlement with help from self-chosen neutral intermediaries. However, the application of ADR remains restricted to contractually enforced choice of dispute resolution or a mandate of court of law. The benefits however can be

⁴⁰ *Supra* note 3, at 24.

enormous - time and cost efficiency, flexibility, internal control, neutrality, confidentiality and much more. It provides enhanced flexibility to approach dispute resolution beyond the mandates, rigours and limits of traditional court litigation. Both these elements, that is, SIPJs and ADR, can together create strong IP enforcement mechanisms that are essential for development of a domestic IP ecosystem capable of meeting global challenges.

GLOBALIZATION LAW AND COMMUNITY

**Dr. Ayan Hazra
Dr. Ankit Awasthi**

**SATYAM LAW
INTERNATIONAL**



94

Chapter 3

THEORETICAL APPROACHES TO HIGHER EDUCATION

Noor Ameena

Abstract

The objective of this chapter is to explore the existing literature on the intersections of higher education, state and society what higher education means to society and how far the state is responsible to provide higher education for its citizens whether the unspoken contract between the state and its citizens would include the provisioning of education up to all levels? What are the ends of higher education whether higher education is to be seen as a public good or can it be yet another commodity that can be bought and sold in the market? Whether higher education is for all or is it something that is and should remain exclusive to the select few? What does it mean to be in a higher education space—how far higher education spaces are accessible to the marginalized sections of society? Whether protected entry of marginalized students into a higher education space guarantee continued education till the successful completion of the program? Whether the market-centric growth of higher education distorts equity, converting higher education spaces into exclusionary spaces? The questions are many, all or most of which centers around the extent of state responsibility for education, including higher education. The three major themes in the article would be (a) whether higher education is so important—that it deserves the attention of the state? (b) Whether higher education, in the absence of state intervention, tend to reproduce the existing inequalities in society? and (c) What is the role of the state in ensuring equitable opportunities in higher education? The chapter tends

to explore the philosophies and scholarship of John Dewey, Antonio Gramsci, Babasaheb Ambedkar, Pierre Bourdieu, Coleman, Goffman, Amartya Sen, Satish Deshpande and many other scholars to study the inter-se relationship between state and higher education.

Keywords: Higher education; society; theoretical approach; India; the role of the state

Introduction

What does higher education mean to society? Should a state be responsible for providing higher education for its citizens? Whether the unspoken contract between the state and its citizens would include the provisioning of education up to all levels? What are the ends of higher education? Whether higher education is to be seen as a public good or can it be yet another commodity that can be bought and sold in the market? Whether higher education is for all or is it something that is and should remain exclusive to the select few? What does it mean to be in a higher education space? How far higher education spaces are accessible to the marginalized sections of society? Whether protected entry of marginalized students into a higher education space guarantee continued education till the successful completion of the program? Whether the market-centric growth of higher education distorts equity, converting higher education spaces into exclusionary spaces? The questions are many, all or most of which centers around the extent of state responsibility for education, including higher education.

The object of this chapter is to explore the existing literature on the intersections of higher education, state and society. The chapter tends to

explore the philosophies and scholarship to study the inter-relationship between state and higher education. The three major themes in the article would be (a) whether higher education is so important—that it deserves the attention of the state? (b) Whether higher education, in the absence of state intervention, tend to reproduce the existing inequalities in society? and (c) What is the role of the state in ensuring equitable opportunities in higher education?

Why Higher Education—Ends of Higher Education?

Let us begin by asking why higher education? What are the ends of higher education? At a narrower level, the ends of education are often referred to in economic terms— education for employment or greater economic advancement. This is a reductionist approach to higher education, limiting the ends of higher education to the relationship between an individual and the state, the benefits of higher education to be distributed only among the participants of higher education. It has to be emphasized that 'higher education is a public good, not simply a set of private benefits for those who happen to participate in it' and therefore, the issues and concerns of higher education are matters affecting the greater public interest and not limited concerns of 'current students and academics.'³³

John Dewey, in his work, *Education and Democracy*, lays down 'democracy' as central to the ends of education. Democracy for Dewey is not limited to the idea of transfer of power but a way of living where one could protect their best interests and secure individual growth while at the same time recognizing and protecting each other's interests. It is because of the difference between people and the conflicting claims that they bring

³³Collini, S. (2012). *What are universities for?* United Kingdom: Penguin.

explore the philosophies and scholarship to study the inter-se relationship between state and higher education. The three major themes in the article would be (a) whether higher education is so important—that it deserves the attention of the state? (b) Whether higher education, in the absence of state intervention, tend to reproduce the existing inequalities in society? and (c) What is the role of the state in ensuring equitable opportunities in higher education?

Why Higher Education—Ends of Higher Education?

Let us begin by asking why higher education? What are the ends of higher education? At a narrower level, the ends of education are often referred to in economic terms— education for employment or greater economic advancement. This is a reductionist approach to higher education, limiting the ends of higher education to the relationship between an individual and the state, the benefits of higher education to be distributed only among the participants of higher education. It has to be emphasized that 'higher education is a public good, not simply a set of private benefits for those who happen to participate in it' and therefore, the issues and concerns of higher education are matters affecting the greater public interest and not limited concerns of 'current students and academics.'³³

John Dewey, in his work, *Education and Democracy*, lays down 'democracy' as central to the ends of education. Democracy for Dewey is not limited to the idea of transfer of power but a way of living where one could protect their best interests and secure individual growth while at the same time recognizing and protecting each other's interests. It is because of the difference between people and the conflicting claims that they bring

³³Collini, S. (2012). *What are universities for?* United Kingdom: Penguin.

forth that we need democracy in the first place; 'the method of democracy - insofar as it is that of organized intelligence—is to bring these conflicts out into the open where their special claims can be seen and appraised where they can be discussed and judged in the light of more inclusive interests than are represented by either of them separately'.¹⁴

Social mobility is the key among the perks of higher education—better job prospects and higher income and above all, improved social being. (In a scenario of persistent unemployment, including educated unemployed, there is no guarantee that higher education contributes to better job prospects—and very much depends upon what kind of higher education and where did they obtain it from). However, higher education impacts the social stature of an individual as well as the standard of living of the family. Hence ends of higher education are not exclusively academic. An educated member creates a ripple effect in the family and with better guidance and motivation, more members in the family and the community would secure higher education and explore further prospects. This is the reason why access to higher education is all the more important for communities that were traditionally excluded from higher education spaces.

Role of State in Higher Education

Higher Education in a Welfare State

Capability Expansion as Welfarist Function of State: Sen and Nussbaum

The idea of 'welfare state' and 'rights' was relatively new in the lexicon of political theory. The conception of the welfare state has a long evolution but succinctly, attached to the historical processes of transforming 's

¹⁴Bacon, M., and Sloam, J. (29 October 2010). John Dewey and the democratic role of higher education. *Journal of Political Science Education*, vol. 6, no. 4, pp. <https://doi.org/10.1080/15512169.2010.518087>.

'citizen' and modern states willing to recognize right-bearing citizens, these are mutually respecting processes. At any point when a citizen asserts a right over something, the individual raises to a higher stature and at the same time, the governmental power transforms into authority, accruing political legitimacy. The welfare functions before the establishment of the modern state were performed by the ruler out of benevolence or a sense of justice or a moral right; often, religious institutions like Church or other charitable institutions also performed the same functions. But none of these were out of a 'right' as an entitlement, as we understand today. The advent of the modern state transforms the just claims of the citizens enforceable through alternate mechanisms; in other words, if the state fails to fulfill one's right, one is entitled to remedial measures.

Amartya Sen's 'capability expansion' model is a much-celebrated model of welfare state functions. The idea of capability expansion has been used by several in several settings. In the capability approach, the life of an individual is conceived as a set of 'doings' and 'beings' (together called 'functionings') which an individual can perform. Functioning is the achievement of a person: what he or she manages to do or be. The capability of a person is a derived notion that reflects the various combinations of functionings they can achieve. In other words, the capability set of an individual is indicative of the freedom of an individual to choose among the different ways of living. In *Development as Freedom*, Sen emphasizes expanding the freedom (or capability set) of individuals as the key to development or as the development itself³⁵. In Marxian terms, it is the replacement of the dominance of circumstances over one's life chances

³⁵Sen, A. (1999). *Development as freedom*. Oxford University Press.

with individual choices. The state shall endeavor to create conditions for expanding the capabilities of all. Education, including higher education, is a welfare state domain and is key to development.

While Sen emphasizes the intrinsic value of freedom to have alternatives, Amiya Bagchi (2000) questions the silence of Sen on the shortcomings of procedural democracy and of today's market economies, in which abuse of monopoly and financial power is common. He argues that Sen's focus remains on ways in which the institutions affect the exchange entitlements of individuals, not on how relationships of production confine human possibilities³⁶. He questions the very idea of 'choice' that is considered central to market economies. Rather, the market works on the idea of 'survival of the fittest' and 'elimination of the rest'.

Basic Minimum Functions of State: Kapur and Mehta

There is a set of basic minimum functions that the state is bound to perform. This includes security, education and health, among others. The blatant privatization of these sectors would inevitably be followed by deprivation of these services to definite sections of the society unless adequate measures have been taken to prevent the same. While the private sector essentially functions 'for profit', subjecting the essential commodities and services to the vagaries of the profit-hungry world is a huge disservice to the people at large, especially poor and disadvantaged sections of the society. The major argument for privatization has been opening up more 'choices'. However, for someone who cannot pay, to say that there are a whole lot of choices for you is tying varieties of bread at

³⁶ Bagchi, A.K. (2000). Freedom and development as end of alienation? Ed. Amartya Sen, *Economic Political Weekly*, vol. 35, no. 50, pp. 4408-20.

height for the short Lilliputians. Any addition to that lot of pieces of bread is of no significance to them.

"Undoubtedly, the expansion and growth of India's private sector and vibrant civil society will substitute for some of the shortcomings of the public sector in the foreseeable future. Nevertheless, there is a wide range of core functions, from regulation to security, from social inclusion to public goods provision where the state is—and will be—indispensable. This is particularly true for India's vulnerable population—such as its 265 million-odd poor or members of historically marginalized minority groups—who rely on public assistance to meet their most basic needs." "These vulnerable populations, unlike India's middle and upper classes, do not have a viable 'exit' option from the public sector and its myriad deficiencies"³⁷.

Albert Hirschman writes, there are two typical responses to disenchantment with state services: (i) Exit and (ii) Voice. Either you exit the system which oppresses you or you fight against it remaining within the system. "When a government's ability to provide goods and services decline, citizens might exit by moving from a publicly provided service to a private provider or physically relocate to a different government's jurisdiction, either within the country (through internal migration) or outside (emigration)".³⁸ However, this exit option in favor of private goods and services is simply not available to a large section of the population.

³⁷Kapur, D., Mehta, P.B., and Vaishnav, M. (2018). *Rethinking public institutions in India*. Oxford University Press.

³⁸Hirschman, A.O. (1970). *Exit, voice and loyalty: Responses to decline in firms, organizations and states*. Harvard University Press.

Further, there is an 'elite exit' wherein the 'haves' in the society exit the public system in favor of the private sector, the incentive to rectify the decay of public institutions also dies down. Because in a highly stratified society, the voices are also not equally heard and depend much on the power they possess within the society.

Further, there are certain inherent contradictions in private players entering the domain of state functions. The state acquires its legitimacy through 'representation' or 'political participation'. When the activities hitherto considered as state functions are relegated to NGOs, civil society or other private players, there is an inherent democratic deficit in the process – the process amounts to delivery or consumption of a service. This is not comparable to self-realization through political activity. The consequences of the same include,

- (a) the 'politics' give place to 'governance' or 'managerialism',
- (b) weakening the role of the democratic community of citizenship and
- (c) the agencies which deliver basic services like health, education, etc., may tend to reproduce conditions that demand sustained intervention by them, reproducing conditions of their existence and usefulness. When private players engage in the provisioning of higher education, all the characteristics that make it public good are pushed back as secondary concerns.²¹

²¹Chandhoke, N. (5 June 2015). Governance and the Pluralisation of the State. *Economic and Political Weekly*, vol. 38, no. 26, pp. 7-8.

Higher Education as Social Selection

State Nobility: Pierre Bourdieu

Central to Bourdieu's work on higher education is his desire to expose higher education as a powerful contributor to the maintenance and reproduction of social inequality.⁴⁰ Pierre Bourdieu in his work 'State Nobility' presents the picture of the French educational system in 1989, reproducing the aristocratic system in 1789, through the peculiar structuring of schools. The school's system in 1989 France demarcated institutions, *Grand Ecole* providing top-level executives, *Petitecole* supplying middle-level managers and further classification more or less replicating the aristocratic system of the past. The Ivy League universities, as against other universities in America, also effectively churn out a system separating the education for the elite and the masses. The classification of education institutions in India as Institutes of Excellence/ Eminence/ National Importance and starving of state universities about Central Universities also create a similar experience. The bias towards professional courses against traditional degrees in science and humanities; the relative neglect of social sciences, all of it together constitute a chatur-varna system of higher education in India.

Bourdieu argues that 'nobility' which was hitherto a function of birth, is now repackaged as 'academic capital' and unlike aristocratic nobility which was passed on hereditary, academic capital needs to be acquired every generation. He identifies those academic taxonomies are created in tune with the hierarchy of qualities traditionally attributed to the dominant group; hence the new nobility appears as a class of academically talented.

⁴⁰Naidoo, R. (2004). Fields and institutional strategy: Bourdieu on the relationship between higher education, inequality and society. *British Journal of Sociology of Education*, vol. 25, no. 4, pp. 457-71.

Meritocracy as a serious political ideology derives its force from the specialized knowledge made possible by higher education. On the other hand, appearing to equalize access or doing so in practice, allows higher education to render 'hidden services' to the old order by 'concealing social selection under the guise of technical selection and legitimating the reproduction of the [old] social hierarchies by transmitting them into academic hierarchies' ⁴¹⁴². In other words, traditional structures of domination are reproduced in the guise of academic neutrality and effectively legitimize or naturalize the unequal social structures. The new economic order is driven by capitalism and the allied state policies also create structural barriers for higher education, effectively retaining the old order.

The inter-se relationship between higher education, state and society akin to a social compact is ruptured with the advent of neoliberal principle in higher education. The changing perceptions on higher education as a lucrative service that can be sold in the global marketplace have begun to eclipse the social and cultural underpinnings of the social compact. Belatedly, the belief that universities require relative independence from political and corporate influence to function optimally which was in turn linked to the need for guaranteed state funding, academic tenure and professional autonomy, has been eroded. ⁴³ "These changes have resulted

⁴¹Bourdieu, P., and Passeron, J.C. (1977). *Reproduction in education, society and culture*. Sage Publications.

⁴²Deshpande, S., and Zacharias, U. (2013). *Beyond inclusion: The practice of equal access in Indian higher education*. Routledge.

⁴³ Naidoo, R. (2004). Fields and institutional strategy: Bourdieu on the relationship between higher education, inequality and society. *British Journal of Sociology of Education*, 25, no. 4, pp. 457-71.

the implementation of funding and regulatory frameworks that revolve around neo-liberal market mechanisms and new managerial⁴⁴ principles.

The introduction of neo-liberal economic principles and allied managerial practices in education has led to "a reconfiguration of capital value between cultural and economic capital". These changes are explained by the practices leading to the commodification of education, knowledge vis skills turning into a saleable resource and hierarchical placing of institutions that separate the elite from the rest and rewards accordingly and explicitly. Inequality is, therefore, central to the higher education system and often a generator of the same.

Higher education as social selection

Higher education is conceptualized as a sorting machine that selects students according to an implicit social classification and reproduces the same students according to an explicit academic classification which in reality is very similar to the implicit social classification.⁴⁵ Bourdieu (1978) classifies different types of capital—social, cultural and economic—which influence the choice of an individual; it also explains the dominance of certain groups in higher education. Bell, Reay and David (2002) develop the idea of capital to identify a range of factors that influence the choice amongst young people today in Britain. They code these into two types of 'choosers': embedded' and 'contingent'. Embedded are the ones who are

⁴⁴New managerialism is a concept that refers to the extent to which contemporary business practices and private sector ideas or values have permeated publicly funded institutions, following the widespread restructuring of welfare services of the state.

⁴⁵Naidoo. (1998). Fields and institutional strategy: Pierre bourdieu. *The State Nobility: Elite Schools in the Field of Power*. Stanford University Press.

more likely to go to a university while contingent is the ones who have a range of influences working against them.⁴⁶

Social selection: The Indian Experience

Indian independence did not particularly lead to a restructuring of the society. In what is called a 'passive revolution' in Gramscian terms, the transfer of power was made from foreign to the local elite. Hence the old inequalities persisted under the shadow of constitutional unity and formal equality. Unless and until focused efforts are made to undo the deep-rooted social inequalities, formal equality is meaningless. A study conducted based on the data generated by the National Sample Survey Organisation (NSSO) in 2006 displays the hierarchical character of the higher education system.⁴⁷ The 'many' in the Indian higher education system are the demographic minority, i.e., the dominant caste groups. The exclusion of the disadvantaged 'many' is often due to factors like caste, gender, religion, ethnicity or the like. The arguments for inclusion of the disadvantaged are often met with meritocratic arguments that it would affect the quality of the education provided. Satish Deshpande, in his work *Exclusive Inequalities*⁴⁸ succinctly presents this dichotomy of merit and excellence. The ideological function of 'excellence' precept is to delegitimize the 'sufficient' merit of the large numbers in favor of the 'greater' competence of the very small numbers who occupy the top of the forcibly generated

⁴⁶Stephen, J.B., Diane, R., and Miriam, D. (1 December 2002). Ethnic choosing: Minority ethnic student social class and higher education choice. *Race Ethnicity and Education*, vol. 5, no. 4, pp. 333-350. <https://doi.org/10.1080/1361332022000030879>.

⁴⁷Deshpande, S., and Yadav, Y. Redesigning affirmative action. *Economic and Political Weekly*, vol. 44, no. 24 (n.d.): 2419-24.

⁴⁸ Deshpande, S. (5 June 2015). *Exclusive inequalities*. *Economic and Political Weekly*, pp. 7-8.

merit ranking hierarchy. Merit-based competition makes sense only if every participant has equal access to the system.

Table 1

'CONTINGENT' CHOOSERS	'EMBEDDED' CHOOSERS
Finance is a key concern and constraint	Finance is not an issue
Choice uses minimal information	The choice is based on extensive diverse sources of information
The choice is distant or 'unreal'	The choice is part of a cultural script, a 'normal biography'
Few variables are called up	A diverse array of variables is deployed
The choice is general/ abstract	The choice is specialist/ detailed
Minimum support (social capital) is used	Extensive support (social capital) is mobilized
The ethnic variable is active in choosing	The ethnic mix is marginal or irrelevant to choice
Choosing is short term and weakly linked to 'imagined futures' – part of an incomplete or incoherent narrative	Choosing is long term and often relates to vivid and extensive 'imagined futures' – part of a coherent and planned narrative
	'Followers' embedded in a 'deep grammar of aspiration' which

	makes higher education normal and necessary
Narrowly defined socioscapes and spatial horizons – choices are 'local'/ distance is a friction	Broad socioscapes and horizons – choices are 'national' and distance is not an issue
Parents as 'onlookers' or 'weak framers'/ mothers may give practical support	Parents as 'strong framers' and active participants in choice"
Source: Ball, Raey and David (2002)	

Another interesting idea that he proposes is that higher education is in a domain where the demand is far higher than the supply. The ideal way for admission to educational institutions shall be to set basic minimum eligibility requirements to secure one's entry into the system. On the contrary what is done is to set upper limits for the entry into institutions which is only a way to distribute scarce resources in a way that potentially avoids conflict. Hence, in the event of scarcity of resources, the state shall ideally ration the resource (here, higher education seats) which in turn is paraphrased as selection. This camouflage of 'eligibility' into 'excellence' and 'rationing' as 'selection'⁴⁹ shadows the state failure that cannot provide adequate opportunities for higher education for its citizens and turns it into a matter of individual capability or merit.

⁴⁹Deshpande, and Zacharias. *Beyond inclusion*.

Higher Education: Right Based and Policy-Based Approach

Andre Beteille (2001) introduces the idea of 'antinomies of equality' and distinguishes equality from universality in the context of education. In today's world, it is hard to find egalitarians because equality is considered a universal virtue. However, the idea of equality is not concrete; for instance, the advocates and opponents of affirmative action articulate in the language of equality which Beteille (1999) famously calls 'antinomies of equality'. Similarly, universal education may not necessarily mean the termination of inequalities. Universalization of elementary education might mean that the state now dedicates more resources to elementary education but inequality might persist in the quality of elementary education available for different sections of society. Similarly, the universalization of elementary education does not guarantee the universalization of secondary or tertiary education.⁵⁰

As we move from lower to higher levels, educational institutions become increasingly specialized and differentiated. And when the number of applicants is more than the number of seats, the scarcity of the provision is met by introducing the ideas of merit and means. While public educational institutions should operate on merit, should or can private institutions be instructed that they will not allow students having the means to pay but of average or below-average performance, asks Beteille. He further asks, can the state make it a condition that secondary or tertiary education shall only be provided on merit unless the same can be made available to all on an identical basis? Here, by emphasizing more on the scarcity of resources and the impossibility of the state, Beteille, in a way, seems to be normalizing an anomaly. While it is acknowledged that the

⁵⁰Beteille, A. (2001). Equality and universality. *Economic and Political Weekly*, vol. 36, no. 38, pp. 3619-25.

countries face a lack of resources to establish a just system, it should not constrain anybody from demanding just distribution. No country will have resources for everything but prioritization of just needs and reallocation of resources is what is necessary. This requires constant scanner and pressure from society.

Beteille contends that at times, it would serve the public interest or at least the most disadvantaged sections of the society better if inequalities among the better-off sections are allowed to increase instead of artificially reducing it. For example, a strongly competitive system might provide better doctors and engineers to society than a system that discourages competition on the ground of increasing inequality. Beteille's distinction of universality from equality nevertheless provides a new perspective to equality in the context of education, particularly higher education. However, there is a disagreement with Beteille on certain counts because, more often than not, a system itself is designed to suit the few. The better doctors dispensed by the high end private medical colleges would technically be absorbed by the private hospitals and the deteriorating professional ethics in the medical field to a large extent can be attributed to the change in the model of medical education; the deficiency of doctors to serve in rural areas is another consequence of the privatization of medical education.

However, what Beteille also points out is the futility of right-based discourse in a resource-constrained world. Rights give a sense of entitlement and stronger remedies. But what matters equally or more is the policy approach. If the policies of the state are towards rampant privatization of education, a nominal entry of 'right to education including higher education' as another addition to the books of law ma

not be of big help. Civil society initiatives and student bodies need to be cautious of the developments in higher education and promptly respond to the changing policies of the state. But it remains a question if right discourse and policy discourse should go simultaneously or replace one with the other in the context of higher education.

Equality of Educational Opportunities: Entry into an Educational Institution and After

Equality of Educational Opportunity: Coleman

Coleman (1968) emphatically explores the question of what accounts for equality of educational opportunity. The idea of equality of educational opportunity itself is a later addition to the glossary of equality. At times when the family was the central economic unit or unit of production, the concept of equality of educational opportunity was *non-est*. The educational needs of an individual were dealt with within the family and education to a large extent, was synonymous with skills. A family who performed a welfarist function took care of the individual's needs and an individual gelled with family as an economic unit. With the advent of industrialization, individuals started moving away from family to factory as an economic unit. This is when the need for education outside of the family emerged. Public education, 'public' meaning state-sponsored education, in Europe and America began only in the early 19th century.⁵¹ Reading Coleman outside the industrial world, even in primarily agricultural regions, the equality of educational opportunity can be seen to be of a later import beginning with the propensity of individuals to move away from

⁵¹James, S.C. (1 September 1968). Equality of educational opportunity. *Equity and Excellence in Education* 6, no. 5, pp. 19-28.
<https://doi.org/10.1080/0020486680060504>

agriculture as well as the slow progress of social reform movements. The expansion of public education in India cannot be seen outside of the caste structures and practices which continue even today in various forms.

Inherited Merit, Equality of Rights and Equality of Opportunities: Clancy and Goastellec

Clancy and Goastellec (2007) classify the approaches to higher education into three historical phases. In the initial phase, universities were available only for those from particular backgrounds, be it gender, race or religion – also termed as 'inherited merit'. The second phase is marked by the call for 'equality of rights' when there is no explicit discrimination or formal barriers but still, the students from marginalized backgrounds face significant difficulties in securing access to higher education. The third phase is marked by the 'equity' or 'equality of opportunity' approach wherein the idea was crystallized that the absence of barriers is not sufficient but concerted positive action in the form of subtle mechanisms needs to be devised to achieve real or substantive equality.³²

Affirmative Action for Equalizing Opportunities

Affirmative action was introduced as a mechanism to make the higher education space more equitable, providing opportunities for children belonging to historically marginalized and weaker sections of society to participate in higher education. Affirmative action policies are given effect via reservation of seats, relaxation in age, the number of attempts and cut-off marks, etc. While reservations offer protected entry to a hitherto

³²Patrick, C., and Goastellec, G. Exploring access and equity in higher education: Policy and performance in a comparative perspective. *Higher Education Quarterly* 61, no. 2, pp. 136-54.
<https://doi.org/10.1111/j.1468-2273.2007.00343.x>

prohibited domain, quotas are far from sufficient to equalize access in higher education. Reservation should be accompanied by a support system that would enable the students to complete the education without difficulty – which would include sensitization of the peers on social exclusion and marginalization, deconstruction of the idea of merit, breaking the hegemony perpetrated through language and curriculum, among others. "In brief, equalizing access to higher education in a substantive sense presumes the provision of protected entry but requires much more—it requires equalization of access to the resources that determine success in higher education".⁵³

Institutions as centers of discrimination

Entry into an educational institution does not ipso-facto guarantee successful completion of education and advancement of life chances. Institutions often become sites of structural discrimination and labeling. Students from socially stigmatized groups are often characterized as 'not capable of successes or 'destined to fail'? Rao (2013) examines this question using the category developed by Goffman within the settings of an IIT. Goffman defines 'stigma' as an undesired differentness. Individual stigma arises from the social organization of everyday life. According to him, "it is a situation of the individual who is disqualified from the full social acceptance that leads him to experience a discrepancy between the imagined and actual identity which may impact the presentation of his self in the society". This discrepancy between his virtual and actual identity

⁵³Deshpande, and Zacharias. *Beyond inclusion*.

spoils his social identity and discredits him from a whole and usual individual to a tainted one.⁵⁴

The central feature of the stigmatized individual's situation in life is the denial of acceptance or the inability to receive respect and regard in everyday dealings with one another. Goffman further elaborates on the behavior of a stigmatized individual when confronted with a non-stigmatized individual (whom Goffman refers to as a normal person) in an interaction situation. One of the consequences of this is 'cowering', in other words, the individual shrinks, trembles or shies away. In situations where such an individual faces a mixed social situation, he may respond anticipatorily by 'defensive cowering'. Any interaction with an individual known or perceived to have a stigma creates 'uneasiness' at both ends. Goffman observes that as a result of this interaction, uneasiness and covering, 'self-exclusion becomes most prominent which is often cited by many researchers as one of the possible reasons for their academic failure and lack of social adjustment. In other words, 'the process of self-exclusion is in itself an outcome of the exclusionary social situation and the very structure of everyday social life which the stigmatized individual encounters'.⁵⁵

Some studies themed upon the underachievement of SC and ST students in IITs have attributed several reasons for the possible alienation of students from labeled groups: financial reasons and the ability of students to cope with institute's high academic standards; non-cognitive factors of personality disposition; linguistic handicap, cultural shock and inferiority complex; lack of proper pre-school and preparatory training;

⁵⁴Geetha, B. (2013). Nambissan and Srinivasa Rao, *Sociology of education in India: Changing contours and emerging concerns*. India: Oxford University Press.

⁵⁵ Nambissan, and Rao.

resentment at the hands of non-SC/ST students; the incidence of psychological symptoms; and feeling of inferiority, helplessness and distinct feeling of lacking upper-class urban culture.¹⁰

Equity in Education: Access and Participation

Equity in education has two dimensions. The first is *fairness* which implies ensuring that personal and social circumstances should not be an obstacle to achieving educational potential. The second is *inclusion* which ensures a basic minimum standard of education for all.¹¹ On the other hand, equity has also been conceptualized as equity of access and equity of outcome. In the specific context of higher education, equity of access relates to equality of opportunities to enter tertiary education and to access programs at different levels and with distinct qualities; and equity of outcomes relates to opportunities to progress and complete higher education studies and also to achieve particular returns to tertiary education.

For our purposes, we could classify the equity in education as Access and Participation. Access to higher education can be broadly classified into three:

- a) physical access which covers geographical and financial access;
- b) social access which covers the absence of ostracisation or social prohibition and tackling of alienation or self-exclusion and
- c) epistemological access covers adaptation of curriculum, language barriers, etc.

¹⁰ Ibid.

¹¹ OECD, *Equity and quality in education: Supporting disadvantaged students and schools* (Paris: 2006) <https://doi.org/10.1787/9789264130852-en>.

Physical access does not automatically lead to participation unless social and epistemological access is taken care of. Social access in a prejudiced world goes beyond legal mandates. For example, countries have made racial/ caste discrimination an offense but that does not end discrimination by itself but percolates in all social spheres. As regards epistemological access, some scholars believe that the oppressed has to be introduced to the powerful or dominant forms of knowledge, Gramsci, for example and that, according to them, is the way out to self-emancipation. On the other hand, certain scholars demand revision of curriculums to include non-dominant forms of knowledge. It is impossible to replace one with the other. It is important to expand the curriculum to include non-dominant or subaltern knowledge—the curriculums are often built as uni-cultural; histories are consistently written to affirm one side of the story as if there are a multitude of communities who exist without culture or history because they were different from the dominant and became insignificant or deviant. On the other hand, it is also important to be equipped with the dominant forms of knowledge least one might be ill-equipped to survive in this competitive world.

Mc Cowen (2016) proposes a three-dimensional approach to see if an educational policy is equitable or not—(a) availability, (b) accessibility and (c) horizontality. Availability refers to the absence of rationing or in other words, there should be enough provision for all who desire to pursue higher education to do so. Accessibility refers to the removal of different barriers to higher education – lack of financial or social capital, tuition fees, competitive exams that disadvantage those with poor quality previous schooling, geographical location of institutions, the opportunity costs of spending years out of employment, as well as a range of other constraints

relating to language, culture and identity. Horizontality refers to quality and standard across the institutions. This does not bar differentiation and specialization of universities but implies that such opportunity shall not be restricted to those with prior socio-economic privilege.²⁸

An analysis of socio-economic indicators shows that a student's family background has a strong influence on access to higher education; equal access to higher education is still something of a myth. A student from a family with high socio-cultural capital has about 10 times more chances of accessing higher education than a student from a family with modest resources. Any discussion on access to higher education should pre-empt the questions of access to elementary education. School supply is an important factor in access; rural Dalits live in spatially segregated clusters and separate habitations in multi-caste villages. The same is true of Muslims as well, every major city has an Islampur or an area with similar nomenclature. In either case, the politics of provision or access makes school attendance difficult. It is well substantiated by the studies that school distance reduces the possibility of participation, especially for adolescent girls. Further, physical access does not guarantee social access. Horizontality is a response to a stratified educational system. Vocational training is important but should enable a transition to mainstream degree courses. The marking of vocational courses for the disadvantaged or financially deprived few is against the very idea of equality as fairness. The stratification in higher education in several ways reproduces the historical inequalities that persisted in the society we live in.

²⁸ McCowan, T. (3 July 2016). Three dimensions of equity of access to higher education. *Compare: A Journal of Comparative and International Education* 46, no. 4, pp. 645-65. <https://doi.org/10.1080/03057925.2015.1043237>.

Conclusion

Equality of educational opportunities cannot be materialized except with the concerted efforts to that effect by the state. Opening this sector to the market is likely to have a deleterious impact on the disadvantaged sections of society. The apathy of the middle and upper-class population towards anything government in favor of private services results in an 'elite exit' from the system, leaving the public services in dismay. The market operates in the philosophy of profit and equitable distribution will not be possible without state interventions. With high demand for higher education, admission to institutions is often determined by 'means' or 'merit'. Merit is socially constructed; a system that operates purely on merit is nothing but a discriminatory and hierarchical system that would reproduce the existing inequalities in the society. Within the Indian context, this would mean to privilege the upper caste and upper-class elites. The existing systems of reservations by themselves prove grossly insufficient to cater to ensure real access, not just formal access, to higher education spaces for the disadvantaged sections of the society. Education policies have to be created keeping into account basic principles of fairness and equity such that everyone, irrespective of their social, economic or cultural backgrounds can secure opportunities for higher education.

References

- Bacon, M., and J. Sloam. (29 October 2010). John Dewey and the democratic role of higher education in England. *Journal of Political Science Education*, 6, no. 4, pp. 336-52. <https://doi.org/10.1080/15512169.2010.518087>.
- Bourdieu, P. *The state nobility: Elite schools in the field of power*. Stanford University Press, 1998.
- Carlos, M.M., Nussbaum, D.J. Education for democratic citizenship. *Pragmatism Today*, vol 4, issue 2. https://www.academia.edu/7803797/M._NUSSBAUM_J._DEWEY_AND_EDUCATION_FOR_DEMOCRATIC_CITIZENSHIP
- Chandhoke, N. (5 June 2015). Governance and the pluralisation of the state. *Economic and Political Weekly*, 38, no. 28, pp. 7-8.
- Collini, S. (2012). *What Are Universities For?* UK: Penguin.
- Deem, R. (2001). Globalisation, new managerialism, academic capitalism and entrepreneurialism in universities: Is the local dimension still important? *Comparative Education*, vol. 37, no. 17-20.
- Deshpande, S. (5 June 2015). Exclusive inequalities. *Economic and Political Weekly*, 7-8.
- Deshpande, S., and Y. Yadav. (n.d.). Redesigning affirmative action. *Economic and Political Weekly* 41, no. 24, pp. 2419-24.
- Harber, C., and Mncube, V. (2012). *Education, democracy ad development: Does education contribute to democratisation in developing countries?* Symposium Books Ltd.
- Knowledge Society vs. Knowledge Economy-knowledge, power and politics. s. sörlin. Palgrave Macmillan. <https://www.palgrave.com/in/book/9781403973047>.

- Kotzmann, J. (November 2015). Lifting the cloak of conceptual confusion: Exploring the meaning of the human right to higher education. *Australian Journal of Human Rights* 21, no. 1, pp. 71-96.
<https://doi.org/10.1080/1323238X.2015.11910932>.
- Krishnan, S. (3 July 2018). Regulation and its discontents: The Indian judiciary and higher education. *Commonwealth and Comparative Politics* 56, no. 3, pp. 379-94.
<https://doi.org/10.1080/14662043.2018.1467141>.
- Mayo, P. (2015). *Hegemony and education under neoliberalism: insights from Gramsci*. Routledge.
- Morve, R.K. (October 2014). The story of poor boy. *Dalit Sahitya Publication Press*, vol. 3, issue 04, pp. 243-246.
http://www.dalitsahitya.com/static/media/data/Sangharsh_Vol_03_Issue_04_2014.pdf
- Naidoo, R. (2004). Fields and institutional strategy: Bourdieu on the relationship between higher education, inequality and society. *British Journal of Sociology of Education* 25, no. 4 457-71.
- OECD. (2012). *Equity and quality in education: Supporting disadvantaged students and schools*.
<https://doi.org/10.1787/9789264130852-en>.
- Zeleva, P.T. (2007). Knowledge, globalization and hegemony: Production of knowledge in the twenty-first century. In *Knowledge Society vs Knowledge Economy: Knowledge, Power and Politics*, edited by Sverker Sörlin and Hebe Vessuri, 79-106. Issues in Higher Education. New York: Palgrave Macmillan US.
https://doi.org/10.1057/9780230603516_4.



The Annual Survey of State Laws in India

Editors

Amita Dhanda • Faizan Mustafa

ANDHRA PRADESH					
	ASSAM				
BIHAR		CHHATTISGARH	NCT OF DELHI		
	GUJARAT		JHARKHAND	KARNATAKA	
KERALA	MADHYA PRADESH		MAHARASHTRA		ODISHA
	PUNJAB	RAJASTHAN			TAMIL NADU
TELANGANA		UTTAR PRADESH		WEST BENGAL	

Volume 1 • April 2022

The Annual Survey of State Laws in India

Edited by Amita Dhanda and Faizan Mustafa



The National Academy of Legal Studies and Research (NALSAR)

Justice City, Shamirpet,
Hyderabad, Telangana 500101

2022

Mode of Citation: 1 ASSL (2022)

All content in this volume is licensed under a Creative Commons Attribution-NonCommercial-ShareAlike 2.5 India License (CC BY-NC-SA 2.5 IN)

Under the terms of this license, the full text of which can be found at <https://creativecommons.org/licenses/by-nc-sa/2.5/in/legalcode>, you are free to:

- **Share** — copy and redistribute the material in any medium or format
- **Adapt** — remix, transform, and build upon the material

Under the following terms:

- **Attribution** — You must give appropriate credit, provide a link to the license, and indicate if changes were made. You may do so in any reasonable manner, but not in any way that suggests the licensor endorses you or your use.
- **Non-Commercial** — You may not use the material for commercial purposes.
- **ShareAlike** — If you remix, transform, or build upon the material, you must distribute your contributions under the same license as the original.
- **No additional restrictions** — You may not apply legal terms or technological measures that legally restrict others from doing anything the license permits.

The licensor cannot revoke these freedoms as long as you follow the license terms.

Notices:

- You do not have to comply with the license for elements of the material in the public domain or where your use is permitted by an applicable exception or limitation.
- No warranties are given. The license may not give you all of the permissions necessary for your intended use. For example, other rights such as publicity, privacy, or moral rights may limit how you use the material.

Editorial Advisory Board

- **Archana Parashar**, Emeritus Associate Professor, Macquarie University, Australia
- **Cole Durham**, Professor, Brigham Young University, USA
- **Francesco Palermo**, Head, Institute for Comparative Federalism, Eurac Research, Italy
- **M P Singh**, Professor Emeritus, Delhi University and Distinguished Professor, Jindal Global University, Sonapat
- **Manoj Sinha**, Director, Indian Law Institute, New Delhi
- **Mihir Desai**, Senior Advocate, Bombay High Court
- **Rangin Tripathi**, Professor of Law, National Law University, Odisha
- **Sitharamam Kakarala**, Professor, Azim Premji University, Bengaluru

Contents

Introduction – Amita Dhanda and Faizan Mustafa	v
1. Andhra Pradesh – Anindita Mukherjee	1
2. Assam – Pritam Baruah and Manash Pratim Dutta	13
3. Bihar – Vivek Mukherjee and Akansha Singh	23
4. Chhattisgarh – Nikita Agarwal	35
5. Gujarat – Neha Pathakji	45
6. Jharkhand – Prerna	53
7. Karnataka – Neela Badami	64
8. Kerala – Noor Aameena	76
9. Madhya Pradesh – Aymen Mohammed	88
10. Maharashtra – N. Vasanthi	102
11. Odisha – Rahul Mohanty	114
12. Punjab – Subhashini Shriya	126
13. Rajasthan – Subhashini Shriya	140
14. Tamil Nadu – Rohan K. George	152
15. Telangana – Aymen Mohammed and Amita Dhanda	166
16. The National Capital Territory of Delhi – Pranav Verma	183
17. Uttar Pradesh – Faizan Mustafa	194
18. West Bengal – Anirban Chakraborty	208



96

The Annual Survey of State Laws in India

Editors

Amita Dhanda • Faizan Mustafa

ANDHRA PRADESH					
	ASSAM				
BIHAR		CHHATTISGARH	NCT OF DELHI		
	GUJARAT		JHARKHAND	KARNATAKA	
KERALA	MADHYA PRADESH		MAHARASHTRA		ODISHA
	PUNJAB	RAJASTHAN			TAMIL NADU
TELANGANA		UTTAR PRADESH		WEST BENGAL	

Volume 1 • April 2022

The Annual Survey of State Laws in India

Edited by Amita Dhanda and Faizan Mustafa



The National Academy of Legal Studies and Research (NALSAR)

Justice City, Shamirpet,
Hyderabad, Telangana 500101

2022

Mode of Citation: 1 ASSL (2022)

All content in this volume is licensed under a Creative Commons Attribution-NonCommercial-ShareAlike 2.5 India License (CC BY-NC-SA 2.5 IN)

Under the terms of this license, the full text of which can be found at <https://creativecommons.org/licenses/by-nc-sa/2.5/in/legalcode>, you are free to:

- **Share** — copy and redistribute the material in any medium or format
- **Adapt** — remix, transform, and build upon the material

Under the following terms:

- **Attribution** — You must give appropriate credit, provide a link to the license, and indicate if changes were made. You may do so in any reasonable manner, but not in any way that suggests the licensor endorses you or your use.
- **Non-Commercial** — You may not use the material for commercial purposes.
- **ShareAlike** — If you remix, transform, or build upon the material, you must distribute your contributions under the same license as the original.
- **No additional restrictions** — You may not apply legal terms or technological measures that legally restrict others from doing anything the license permits.

The licensor cannot revoke these freedoms as long as you follow the license terms.

Notices:

- You do not have to comply with the license for elements of the material in the public domain or where your use is permitted by an applicable exception or limitation.
- No warranties are given. The license may not give you all of the permissions necessary for your intended use. For example, other rights such as publicity, privacy, or moral rights may limit how you use the material.

Editorial Advisory Board

- **Archana Parashar**, Emeritus Associate Professor, Macquarie University, Australia
- **Cole Durham**, Professor, Brigham Young University, USA
- **Francesco Palermo**, Head, Institute for Comparative Federalism, Eurac Research, Italy
- **M P Singh**, Professor Emeritus, Delhi University and Distinguished Professor, Jindal Global University, Sonapat
- **Manoj Sinha**, Director, Indian Law Institute, New Delhi
- **Mihir Desai**, Senior Advocate, Bombay High Court
- **Rangin Tripathi**, Professor of Law, National Law University, Odisha
- **Sitharamam Kakarala**, Professor, Azim Premji University, Bengaluru

Contents

Introduction – Amita Dhanda and Faizan Mustafa	v
1. Andhra Pradesh – Anindita Mukherjee	1
2. Assam – Pritam Baruah and Manash Pratim Dutta	13
3. Bihar – Vivek Mukherjee and Akansha Singh	23
4. Chhattisgarh – Nikita Agarwal	35
5. Gujarat – Neha Pathakji	45
6. Jharkhand – Prerna	53
7. Karnataka – Neela Badami	64
8. Kerala – Noor Ameen	76
9. Madhya Pradesh – Aymen Mohammed	88
10. Maharashtra – N. Vasanthi	102
11. Odisha – Rahul Mohanty	114
12. Punjab – Subhashini Shriya	126
13. Rajasthan – Subhashini Shriya	140
14. Tamil Nadu – Rohan K. George	152
15. Telangana – Aymen Mohammed and Amita Dhanda	166
16. The National Capital Territory of Delhi – Pranav Verma	183
17. Uttar Pradesh – Faizan Mustafa	194
18. West Bengal – Anirban Chakraborty	208



97

The Annual Survey of State Laws in India

Editors

Amita Dhanda • Faizan Mustafa

ANDHRA PRADESH					
	ASSAM				
BIHAR		CHHATTISGARH	NCT OF DELHI		
	GUJARAT		JHARKHAND	KARNATAKA	
KERALA	MADHYA PRADESH		MAHARASHTRA		ODISHA
	PUNJAB	RAJASTHAN			TAMIL NADU
TELANGANA		UTTAR PRADESH		WEST BENGAL	

Volume 1 • April 2022

The Annual Survey of State Laws in India

Edited by Amita Dhanda and Faizan Mustafa



The National Academy of Legal Studies and Research (NALSAR)

Justice City, Shamirpet,
Hyderabad, Telangana 500101

2022

Mode of Citation: 1 ASSL (2022)

All content in this volume is licensed under a Creative Commons Attribution-NonCommercial-ShareAlike 2.5 India License (CC BY-NC-SA 2.5 IN)

Under the terms of this license, the full text of which can be found at <https://creativecommons.org/licenses/by-nc-sa/2.5/in/legalcode>, **you are free to:**

- **Share** — copy and redistribute the material in any medium or format
- **Adapt** — remix, transform, and build upon the material

Under the following terms:

- **Attribution** — You must give appropriate credit, provide a link to the license, and indicate if changes were made. You may do so in any reasonable manner, but not in any way that suggests the licensor endorses you or your use.
- **Non-Commercial** — You may not use the material for commercial purposes.
- **ShareAlike** — If you remix, transform, or build upon the material, you must distribute your contributions under the same license as the original.
- **No additional restrictions** — You may not apply legal terms or technological measures that legally restrict others from doing anything the license permits.

The licensor cannot revoke these freedoms as long as you follow the license terms.

Notices:

- You do not have to comply with the license for elements of the material in the public domain or where your use is permitted by an applicable exception or limitation.
- No warranties are given. The license may not give you all of the permissions necessary for your intended use. For example, other rights such as publicity, privacy, or moral rights may limit how you use the material.

Editorial Advisory Board

- **Archana Parashar**, Emeritus Associate Professor, Macquarie University, Australia
- **Cole Durham**, Professor, Brigham Young University, USA
- **Francesco Palermo**, Head, Institute for Comparative Federalism, Eurac Research, Italy
- **M P Singh**, Professor Emeritus, Delhi University and Distinguished Professor, Jindal Global University, Sonapat
- **Manoj Sinha**, Director, Indian Law Institute, New Delhi
- **Mihir Desai**, Senior Advocate, Bombay High Court
- **Rangin Tripathi**, Professor of Law, National Law University, Odisha
- **Sitharamam Kakarala**, Professor, Azim Premji University, Bengaluru

Contents

Introduction – Amita Dhanda and Faizan Mustafa	v
1. Andhra Pradesh – Anindita Mukherjee	1
2. Assam – Pritam Baruah and Manash Pratim Dutta	13
3. Bihar – Vivek Mukherjee and Akansha Singh	23
4. Chhattisgarh – Nikita Agarwal	35
5. Gujarat – Neha Pathakji	45
6. Jharkhand – Prerna	53
7. Karnataka – Neela Badami	64
8. Kerala – Noor Ameen	76
9. Madhya Pradesh – Aymen Mohammed	88
10. Maharashtra – N. Vasanthi	102
11. Odisha – Rahul Mohanty	114
12. Punjab – Subhashini Shriya	126
13. Rajasthan – Subhashini Shriya	140
14. Tamil Nadu – Rohan K. George	152
15. Telangana – Aymen Mohammed and Amita Dhanda	166
16. The National Capital Territory of Delhi – Pranav Verma	183
17. Uttar Pradesh – Faizan Mustafa	194
18. West Bengal – Anirban Chakraborty	208